

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLANT AND JOINT APPENDIX 255

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20, 184

488A

William B. Adams,

Appellant

v.

United States Court of Appeals
for the District of Columbia Circuit

John M. Firmin,

FILED AUG 25 1966

S. Lewis Morgan, Jr.,

and

Nathan J. Paulson
CLERK

M. Chandler Stith,

Appellees

Appeal from an Order of the United States District
Court for the District of Columbia

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Attorney for Appellant

Alvin O. West
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Attorney for Appellees

QUESTIONS PRESENTED

1. The question is whether the Court should grant a full and complete hearing upon a motion made by plaintiff to vacate a voluntary dismissal of a civil action for libel and restore the cause to the trial calendar based upon the alleged failure of the defendants to perform in good faith the terms of the agreement of settlement which prompted the voluntary dismissal.

2. The question is whether upon a motion by plaintiff to vacate a voluntary dismissal and restore a cause to the trial calendar, because of the alleged failure of the defendants to perform in good faith the terms of the agreement of settlement, the Court abused its discretion in failing to base its ruling upon the merits of the motion rather than upon the Court's personal opinion regarding the general social value of the litigation in question.

BRIEF FOR APPELLANT

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

No. 20,184

William B. Adams,

Appellant,

v.

John M. Firmin, et al.,

Appellees.

Appeal from Order of the United States District Court
for the District of Columbia

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UNITED STATES COURT OF APPEALS
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BRIEF FOR THE APPELLANT

JURISDICTIONAL STATEMENT

On April 9, 1959, Appellant, (plaintiff below) filed in the United States District Court for the District of Columbia a civil complaint for libel against Appellees, (defendants below) (JA. 4) claiming compensatory and exemplary damages in the amount of \$750,000.00. That action was dismissed by praecipe on March 11, 1964, pursuant to a written agreement between the parties (JA. 15). Plaintiff thereafter moved the Court below to set aside the voluntary dismissal and return the cause to the trial calendar (JA. 22). That motion was denied by Order of February 21, 1966, (JA. 28).

This is an appeal from that Order and jurisdiction of this appeal is based upon Title 28, Section 1291 of the United States Code.

STATEMENT OF THE CASE

This is a suit by Appellant, a Baptist Minister, against three defendants who wrote and caused to be published a libelous resolution concerning Appellant's efforts to collect for his congregation, the Temple Hill Baptist Church, funds which had been appropriated for that congregation's use by the District of Columbia Baptist Convention.

This suit was settled by a written agreement between the parties (JA. 15) executed in chambers of the trial judge to whom the trial of the case had been assigned. That agreement provided that Appellees would perform certain acts to rescind their libelous action and expunge the resolution from the records of various bodies within the District of Columbia Baptist Convention and the Convention itself. On the basis of this agreement, and in reliance thereon, Appellant, through counsel, executed a praecipe of dismissal of this suit.

Upon learning that Appellees had failed to live up to the terms of the agreement of settlement, Appellant moved the Court by written motion to vacate the voluntary dismissal and restore the cause to the trial calendar (JA. 22). Appellant's motion came on for hearing on November 19, 1965, before the Court below (Judge McGarraghy) who in turn ordered Appellant and Appellees to each file Statements of provisions of the agreement not complied

with by the opposing parties (JA. 25) without ruling on the motion before it.

On February 10, 1966, the motion again came on for hearing before the Court (Judge Gasch). The Court denied the motion by Order of February 21, 1966, (JA. 28). Notice of Appeal was filed on March 22, 1966.

STATEMENT OF POINTS ON APPEAL

1. That the Court below erred in denying a motion to vacate a voluntary dismissal and restore the cause to the trial calendar without a full and impartial hearing on the merits of the motion.
2. That the Court below erred in basing its ruling on the motion before it upon the Court's personal opinion of the social value of litigation in church matters rather than upon the merits of the motion, evidence and arguments before it.
3. That the Court erred in not making findings of fact regarding the allegations presented by Appellant in the motion and supporting documents.
4. That the Court below abused its discretion and therefore erred in denying Appellant's motion to vacate a voluntary dismissal and restore the cause to the trial calendar.

SUMMARY OF ARGUMENT

The Appellant will argue that the Court erred in denying his motion to vacate his voluntary dismissal without a full and impartial hearing on the merits and the taking of testimony under oath if necessary. The Appellant will further argue that the Court below erred in basing its ruling on his motion to

vacate a voluntary dismissal upon the size and extent of the Court file in the case and upon the Court's personal opinion regarding the social value of litigation in church matters rather than upon the merits of Appellant's motion, thereby abusing its discretion and effecting a denial of substantial justice to Appellant.

ARGUMENT AND BRIEF

The Appellant filed this action against Appellees for libel--a libel which, because directed toward him as a minister, is a source of damage to him more than to any other. The source of the damage is not only the libelous statement itself, but more so the extent of publication or spreading of that statement. The Appellant, knowing the workings of his faith, the procedural steps involved in Baptist polity and more particularly the inner workings of the District of Columbia Baptist Convention, its Board, and Executive Committee, agreed at trial to dismiss this action on the strength of the commitment by Appellees that they would make every effort in good faith to have these bodies rescind the libelous statement and expunge it from their records. This reliance upon the Appellee's promise was based in large part upon Appellant's knowledge that to accomplish their agreed tasks, Appellees would have to present the agreement to at least a quorum of each body as a group for their ratification and consent. Had Appellees followed the procedural rules of these bodies, every member thereof or at least a majority of the membership in each would have been apprised of the recision and expunction of the libelous material. In

no other way can a libel be cured than by publicizing the recision with the same notoriety as the libel itself.

Appellees, however, in their unique positions as officers of various groups sought to obey the letter of the agreement but not the tenor, knowing full well that if they could create the necessary documentary smoke screen they could, at least at first blush, allay any attack upon their lack of fulfillment of their agreement with Appellant.

This course of things became obvious to Appellant but he had long since dismissed his libel suit. His only recourse, after fruitlessly requesting Appellees to fulfill the agreement in good faith, was to move the Court to vacate his dismissal of the action, restore his libel suit to the trial calendar and thereafter go to trial.

The motion, denial of which is the subject of this appeal, resulted. Appellant was prepared and is now prepared to show the Court below that the agreement pursuant to which he had dismissed his suit was not kept by Appellees. However, at the hearing on the motion, the Court below opened by stating at page two of the Transcript of Proceedings:

THE COURT: Mr. Huntsman, I want to make this preliminary statement. This is the size of the file in this case. It has been in this court for approximately six years. It is the kind of issue that ought not to be in the courts at all, in my judgment. I think the time that has been expended on this file, if devoted to the normal uses of religion, could have been utilized much more effectively. That isn't to say that the courts are not open to legitimate controversies. But this

controversy was settled. I think it should remain settled. Now, the differences between the parties can obviously be resolved by men of good will. And the Court will assume that both litigants are men of good will.

Now what do you have to say to the contrary?

After counsel for Appellant attempted to respond to this statement by the Court, the Court proceeded to misconstrue the position of Appellant and denied the motion. Finally after a desperate effort by counsel for Appellant to place a portion of his argument before the Court, the Court concluded after 18 minutes in session by saying, at page 13 of the Transcript of Proceedings:

THE COURT: There are many too many hours devoted to the preparation of this file, and I think that no useful purpose can be served by my granting your motion.

Your motion is denied.

The Court obviously based its ruling on the fact that this had been a long and bitter battle and had consumed much time of the parties and the Court rather than upon the merits of Appellant's allegations. Appellant is entitled to a full and impartial hearing on the merits of his motion, Quick v. Paregol 68 A 2d 211. Without a full and impartial hearing, he has been granted something less than substantial justice. The Court took the position at the outset that it should not even be asked to hear such a case. The Appellant, however, had no choice but to file his libel suit in that Court.

Assume for the sake of argument that the Court below took the correct position in this matter, considering the size of the Court file. What is

Appellant's alternative remedy to suffering the damage without recourse at law? His only alternative is file a new action against Appellees for breach of the agreement of settlement. The latter would consume more of the Court's time and a greater expense than a speedy trial of the libel action as suggested by Appellees in their original opposition to this motion.

Rule 60(b)(6) of the Federal Rules of Civil Procedure grants the Court below power to relieve a party from a final order for any reason justifying relief from the operation of that order. Appellant relied upon this power of the Court below and had a right to expect that it would exercise its discretion upon the merits of the motion not upon extrinsic matters or the Court's personal prejudice against litigation involving church or religious affairs.

The Municipal Court of Appeals for the District of Columbia (now the District of Columbia Court of Appeals) stated that: "A failure to exercise discretion has the same effect as an abuse of discretion," Quick v. Paregol, Supra. The Court below failed to exercise discretion with respect to the merits of the motion before it and thus abused its discretion in denying Appellant's motion on other grounds. Appellant was therefore denied substantial justice by the Court below.

CONCLUSION

For the reasons herein stated the judgment of the Court should be reversed, and this cause of action remanded to the District Court for a hearing of the motion on the merits.

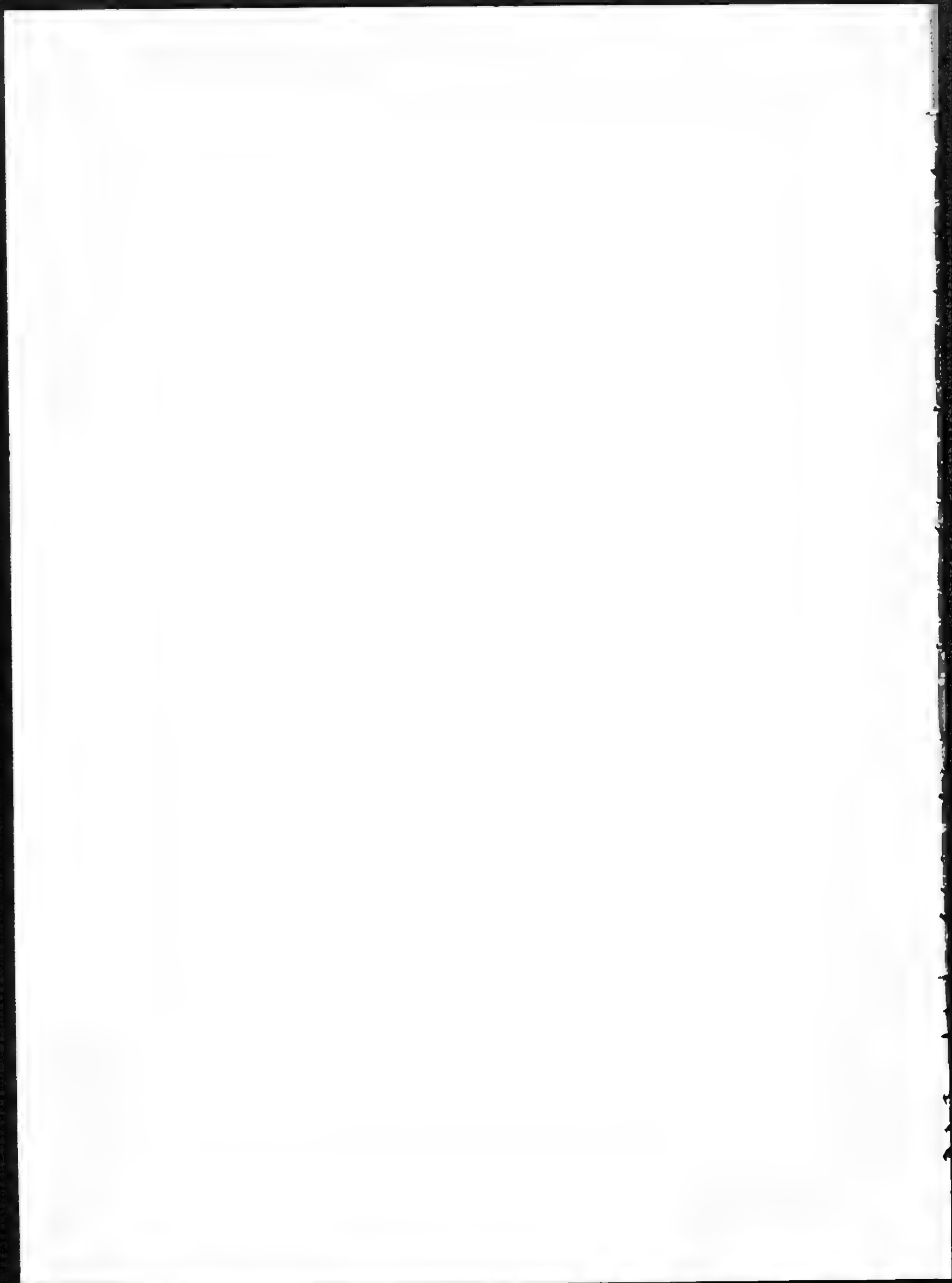
Respectfully submitted,
Lawrence D. Huntsman

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Washington, D. C.
296-0555

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JOINT APPENDIX

CIVIL DOCKET

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Date

Proceedings

1959

Apr. 9 Complaint, appearance Jury Demand, Exhibit "A" filed

*

May. 4 Answer of defts. to complt; ser. acknowledged; 5-4-59; Appearance
of Alvin O. West as atty for defts. filed.

*

1960

Mar. 28 Certificate of readiness. (N/AC) filed

*

Dec. 2 Pretrial Proceedings (signed 12-1-60) Asst. Pretrial examiner

*

1961

Mar. 11 Second amended complaint; jury demand; c/m 3-10-61 filed.

*

Mar. 20 Answer of defts. to second amended complt; c/m 3-20-61. filed.

*

1962

Sept. 13 Certificate of readiness of plaintiff; c/m 9-12-62 filed.

*

1963

July 5 Certificate of readiness of pltf; c/m 7-5-63. filed.

*

Mar. 11 Cause settled and dismissed with prejudice and without costs per
all counsel. (AC/N) filed.

1965

July 15 Motion of pltf to set aside and vacate praecipe of dismissal and restore cause to trial calendar; c/m 7/14/65. M. C. 7/15/65. filed.

July 23 Opposition of defts to motion of pltf to set aside and vacate praecipe of dismissal; c/m 7/22/65. filed.

*

Sep 23 Order dismissing without prejudice motion to set aside and vacate praecipe of dismissal and to restore cause to trial calendar. (N) Holtzoff, J.

Oct 11 Motion of pltf to set aside and vacate a voluntary dismissal and restore case to trial calendar; P&A; c/m 10/8/65. M. C. 10/11/65. filed.

Oct 13 Opposition of defts to pltf's motion to set aside and vacate a voluntary dismissal and restore cause to the trial calendar; c/m 10/13/65. filed.

Nov 19 Order continuing motion to set aside and vacate voluntary dismissal to Dec. 16, 1965 for hearing in Motions Court #2; counsel to file statements within one week. (N) McGarraghy, J.

Nov 26 Statement of pltf as to provisions in settlement agreement; c/m 11/24/65. filed

Nov 26 Statement of defts' of the issues; c/m 11/26/65. filed

Dec. 7 Motion of defts for security for costs and contingent motion to place cause on ready calendar; P&A; c/m 10/13/65. M. C. 12/8/65 filed

1966

Feb 21 Order denying motion of plaintiff to set aside dismissal and restore cause to Ready Calendar; dismissing as moot defendants' motion for security for costs and contingent motion to place cause at top of Ready Calendar. (N) Gasch, J.

Mar 22 Notice of Appeal of pltf; Deposit by Shorter \$5.00. (Notice mailed to Alvin O. West.) filed

*

Apr 13	Transcript of proceedings of 2/10/66; pages 1 - 13; (Rep: Edna B. Romig) Court's copy.	filed
Apr 15	Transcript of proceedings of 2/10/66; pages 1-13; (Rep: Edna B. Romig) Attorney's copy.	filed
Apr 7	Appearance of Miller, Brown and Gildenhorn attys for pltf.	
*		
Apr 22	Defts' exhibit #1 (22 documents)	filed
Apr 27	Order dismissing as moot motions of defts to set time for pltf to post appeal bond to file transcript of final hearing and to complete record on appeal. (N)	Gasch, J.
May 6	Statement of points on appeal of pltf; c/m 5/5/66	filed
May 16	Record on Appeal delivered to USCA. Deposit by Lawrence Huntsman \$4.25	
May 16	Receipt from USCA for Original papers.	filed
Aug 10	Exhibits 1, 2 & 3 of pltff.	filed
Aug 12	Stipulation re supplemental record; exhibit #4 of pltff.	filed
Aug 12	Exhibits 1, 2 & 3 of pltff.	filed

Filed March 10--1961. Harry M. Hull, Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1025-59

William B. Adams,
9400 Rockville Pike,
Bethesda, Maryland

Plaintiff,

v.

John M. Firmin,
c/o Standard Construction Co.,
1000 Connecticut Avenue, N. W.,
Washington, D. C.

S. Lewis Morgan, Jr.,
Randolph & 7th Street, N. W.,
Washington, D. C.

and

M. Chandler Stith,
1628 - 16th Street, N. W.,
Washington, D. C.

Defendants.

SECOND AMENDED COMPLAINT

SUIT FOR LIBEL AGAINST THE SAID DEFENDANTS, AND
DEMANDING JUDGMENT FOR COMPENSATORY, SPECIAL AND
EXEMPLARY DAMAGES

The plaintiff for his cause of action, and by way of a Second Amended
Complaint, alleges:

1. Realleges all of paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of
the original complaint as fully as if set forth herein at length.
2. Plaintiff further alleges that the said defendants by the use of the
language contained in the resolution marked exhibit "A" to the effect that

there is no basis whatever for a claim on the convention by the said church for unpaid money in the amount of \$7,500.00, or any other amount, and that the claims made on behalf of the Temple Hill Baptist Church were unfounded claims, meant, and was intended to mean, that the plaintiff was guilty of the charge of making false, fictitious and fraudulent claims for money not due the Temple Hill Baptist Church and that his conduct was of such a bad character and so contrary to his calling as a minister of the Gospel that his action had made his church unworthy of further financial support, and plaintiff further alleges that the language used in said resolution in reference to the claims on behalf of his church was meant, and was intended to mean, that the plaintiff himself was unworthy as a Baptist minister, and the language used was meant, and was intended to mean, that his action had created disharmony within the convention contrary to the precepts and teachings of those of the Baptist faith or of the Christian religion, and that the plaintiff was a disreputable character unfit to be a minister of the Baptist faith and that his character was such as to discredit him in his profession so that the operational payments in the amount of \$75.00 being paid to his church for the salary of the plaintiff should be discontinued thus penalizing the plaintiff, all of which said charges the defendants, and each of them, well knew to be utterly false, and further knowing that the claims made by the plaintiff on behalf of the Temple Hill Baptist Church for money so due the church were legitimate claims which had been approved in all things by the various annual conventions of the District of Columbia Baptist Convention, and which they knew that

such appropriations for the Temple Hill Baptist Church has not been paid in full.

3. The plaintiff further alleges that on March 18, 1959, a letter was addressed to the defendant, S. Lewis Morgan, Jr., as President of the District of Columbia Baptist Convention demanding that action be taken forthwith to rescind the libelous resolution (Exhibit "A"), and to immediately retract the libelous statements contained in said resolution. The letter was referred to one Alvin O. West now counsel for the defendants. On March 27, 1959, a letter was addressed to Alvin O. West by the counsel for the plaintiff stating that he no doubt was familiar with the law applying to clergymen as far as libel was concerned, and that language which may not be libelous as far as the ordinary citizen was concerned would be libelous per se as applied to clergymen, and there was cited the authority contained in 53 Corpus Juris Secundum, page 87 under paragraph 39 which contained a large number of authorities to support the statement made to Alvin O. West that the language used in the resolution was libelous per se, and the said defendants well knowing that the language used in the said resolution and complained of in this Complaint was libelous per se have, notwithstanding their knowledge in the matter, failed, refused or neglected to repudiate or retract the libelous statements contained in the said resolution.

4. The plaintiff further alleges in the alternative that prior to the time that the plaintiff became the Pastor of Temple Hill Baptist Church, and before the said Church was duly organized, he conferred with Dr. M. Chandler Stith then Executive Secretary to the District of Columbia Baptist Convention, and Rev. Don Loudermilk, Chairman of the Advisory Committee

for the Reception of New Missions and Churches, and Dr. Wilbur Ripley the successor to Rev. Loudermilk about the establishment of a new Baptist Church located in Maryland, and these said officials agreed on behalf of the District of Columbia Baptist Convention that if the plaintiff would organize and establish a church to be known as the Temple Hill Baptist Church, in Maryland, and after organizing said church, incorporate it under the laws of Maryland and acquire real property for its site, and act as its Pastor and promote its development as Pastor and do all things necessary or proper with the establishment of a permanent church known as the Temple Hill Baptist Church, and in consideration of the work and efforts of the said plaintiff the District of Columbia Baptist Convention would assist in the financing of said church, and the payment of the Pastor's salary, all of which was the usual and customary procedure in the establishment and maintenance of churches established by the District of Columbia Baptist Convention.

5. The plaintiff further alleges that in accordance with the agreement he made with the officials named in paragraph 4 hereof, he duly caused to be incorporated under the laws of the State of Maryland a Baptist Church known as the Temple Hill Baptist Church, and acquired real property known as 9400 Rockville Pike, Bethesda, Maryland, suitable for church purposes, and further prepared himself to carry out the terms of the agreement he had made with the officials of the District of Columbia Baptist Convention, and plaintiff further alleges that in accordance with the said agreement the District of Columbia Baptist Convention

allocated to the Temple Hill Baptist Church the sum of \$150.00 per month for the plaintiff's salary as Pastor of said Church for the months of July, August, September and October, 1953, and also during the month of June, 1953, in accordance with the agreement and contract paid the sum of \$365.00 to furnish the necessary equipment to modernize the kitchen of the parsonage on the said premises so that the plaintiff and his family would settle on said premises and have proper kitchen facilities.

6. The plaintiff alleges that he, himself, and the Temple Hill Baptist Church duly carried out each and every part of their agreement with the District of Columbia Baptist Convention in that the plaintiff and his family moved to the said premises located at 9400 Rockville Pike, Bethesda, Maryland, and that he became the Pastor of said Church, and ever since has been such a Pastor, that the real property on which the said Church and parsonage was located became the property of the Temple Hill Baptist Church, and the plaintiff as its Pastor has well and truly carried out the terms of the agreement made with the District of Columbia Baptist Convention, and the said Church became a member of the District of Columbia Baptist Convention pursuant to the agreement made.

7. The plaintiff further alleges that the District of Columbia Baptist Convention, as a corporate body, approved the agreement entered into and carried out the agreement alleged herein to the extent that at the annual conventions of said corporation commencing in the year 1954, and each year until February, 1959, there was placed in the budget of said corporation, and approved by the delegates to said conventions, appropria-

tions for the use and benefit of the Temple Hill Baptist Church, and this plaintiff, for his salary in accordance with contract and agreement, but due to the actions of certain officials of the District of Columbia Baptist Convention the amounts appropriated each year from 1954 to February, 1959, have not been paid under the agreement hereinbefore referred to, but on the contrary there is now due and owing, and was due and owing to the Temple Hill Baptist Church and this plaintiff, a sum of more than \$7,500.00 at the time of the writing, adoption and publication of the libelous resolution as herein alleged which said resolution referred to "unfounded claims" for money which the said defendants well knew were utterly false but on the contrary there was justly due and owing to the Temple Hill Baptist Church the amounts claimed by said church which are referred to in said libelous resolution.

8. The plaintiff alleges that the publication and circulation of the said resolution, such as marked Exhibit "A" and heretofore referred to, has injured the reputation of the plaintiff in his capacity as Pastor of the Baptist Church and has caused him to suffer special damages, and that because of the reckless, malicious and wicked manner in which the said libelous statements contained in the said resolution were written, published and circulated, the plaintiff is entitled to compensatory and special damages in the amount of Five Hundred Thousand Dollars, (\$500,000.00), and is also entitled to recover exemplary damages in the amount of Two Hundred and Fifty Thousand Dollars (\$250,000.00).

WHEREFORE, the plaintiff demands judgment against the said defendants, and each of them, for Five Hundred Thousand Dollars for com-

pensatory and special damages, and the further sum of Two Hundred and Fifty Thousand Dollars for exemplary damages, besides the costs of this action.

/s/ CLAUDE L. DAWSON
CLAUDE L. DAWSON, Attorney
for the Plaintiff, 1049 Shoreham
Building, Washington 5, D. C.

/s/ JOSEPH G. WEEDS
JOSEPH G. WEEDS, Attorney
for the Plaintiff, 1000 Vermont Avenue,
N. W., Washington 5, D. C.

DEMAND FOR JURY TRIAL

Comes now the plaintiff in the above entitled cause, and demands a trial by jury.

/s/ William B. Adams
William B. Adams
Plaintiff.

Filed March 20--1961. Harry M. Hull, Clerk

* * * *

ANSWER OF DEFENDANTS TO SECOND AMENDED COMPLAINT

1. Defendants hereby adopt and reallege the First, Second, and Third Defenses as set forth in their answer to the original complaint.

2. Since by Paragraph 1 of the second amended complaint plaintiff realleges all of the first ten paragraphs of the original complaint, defendants hereby adopt and reallege all of the Fourth Defense as set forth in their answer to the original complaint, with the following changes necessitated by changed circumstances:

(a) Defendant John M. Firmin is no longer the Vice President of the District of Columbia Baptist Convention and Chairman of the Executive Committee, his term of office having expired in November 1959.

(b) Defendant S. Lewis Morgan, Jr., is no longer the President of the District of Columbia Baptist Convention, his term of office having expired in November, 1959.

(c) The Temple Hill Baptist Church is no longer a member of the District of Columbia Baptist Convention as alleged in Paragraph 4 of the original complaint, its membership therein having been terminated effective April 12, 1960, by action of the annual session of the District of Columbia Baptist Convention in November 1959.

3. The Fourth Defense as set forth in defendants' original answer

is hereby supplemented as follows to respond to the additional allegations in the second amended complaint:

(a) The allegations of Paragraphs 2, 4, 7, and 8 of the second amended complaint are denied, and defendants likewise deny that the actions referred to in Paragraph 6 were done pursuant to an agreement as alleged.

(b) Answering Paragraph 3, defendants admit that letters of the dates as alleged were received and that the resolution complained of has not been retracted. The letters referred to speak for themselves as to their contents. Other allegations in Paragraph 3 not herein admitted are denied.

(c) Answering Paragraph 5, defendants admit that Temple Hill Baptist Church was incorporated under Maryland law and that it acquired real property at 9400 Rockville Pike, Bethesda, Maryland. Defendants allege that a request of said church for financial assistance was granted by the Executive Committee of the District of Columbia Baptist Convention on June 8, 1953, in the amount of \$150 per month for the months of June through October, 1953, and in the amount of \$365 for kitchen equipment to be loaned or rented to the church; also that an earlier request by Temple Hill Baptist Church in April 1953 for financial assistance from the District of Columbia Baptist Convention was rejected when the Executive Board of the Convention disapproved the recommendation of the Convention's Advisory Committee that Temple

Hill Baptist Church be admitted to membership in the Convention. Allegations in Paragraph 5 not herein admitted are denied generally, and defendants specifically deny that the financial assistance from the District of Columbia Baptist Convention to the Temple Hill Baptist Church was furnished pursuant to an oral agreement as alleged or any other contractual arrangement.

4. Defendants as a Fifth Defense state that the matters alleged in the second amended complaint are res judicata, in that plaintiff William B. Adams brought an action for libel against Alvin O. West based on the same resolution here complained of, being Civil Action No. 3201-59 in this Court, which action was dismissed for failure of the complaint to state a claim, said judgment of dismissal was affirmed, William B. Adams, Appellant v. Alvin O. West, Appellee, No. 15,826 in the United States Court of Appeals for the District of Columbia Circuit, decided October 3, 1960, and certiorari denied on March 20, 1961, No. 768, October Term 1960 in the Supreme Court of the United States. This decision establishes as a matter of law that the resolution complained of is not libelous as to plaintiff William B. Adams.

5. Defendants John M. Firmin and S. Lewis Morgan, Jr., as a Sixth Defense state that the matters alleged in the second amended complaint are res judicata, in that William B. Adams, who as the minister of Temple Hill Baptist Church is one of its trustees, joined with the

other trustees of said church in an action for libel based on the same resolution here complained of against John M. Firmin, S. Lewis Morgan, Jr., and others, being Civil Action No. 3333-59 in this Court, which action was dismissed for failure of the complaint to state a claim, and said judgment of dismissal was affirmed, Trustees of the Temple Hill Baptist Church v. Frank K. Brasington, et al., No. 15,767 in the United States Court of Appeals for the District of Columbia Circuit, decided November 2, 1960.

/s/ Alvin O. West
Alvin O. West,
Attorney for Defendants, 1411 K
Street, N. W., Washington, D. C.

PLAINTIFF'S EXHIBIT #1

AGREEMENT

William B. Adams, plaintiff, and John M. Firmin, S. Lewis Morgan, Jr., and M. Chandler Stith, defendants, in Civil Action 1025-59 now pending in the United States District Court for the District of Columbia, mutually and individually regret the unfortunate circumstances leading up to the resolution of the District of Columbia Baptist Convention of March 12, 1959. The parties believe that the termination of this litigation is desirable and in the interest of avoiding a lengthy trial and the resulting publicity, they have agreed to settle the present case after having mutually exchanged good and valuable considerations.

1. The Temple Hill Baptist Church shall tender to the District of Columbia Baptist Convention its withdrawal as a member of the Convention, this withdrawal to be effective as of April 12, 1960.

2. The individual defendants pledge in good faith that they will make every effort to effectuate the rescinding and cancellation of the resolution of March 12, 1959 of the Executive Committee of the District of Columbia Baptist Convention, which is the basis of the aforesaid Civil Action No. 1025-59, and the resolution adopted by the Convention on November 17, 1959 terminating the membership of the Temple Hill Baptist Church in said Convention. These defendants further agree that they will take

appropriate steps to have the Executive Committee of the District of Columbia Baptist Convention expunge from its records the aforesaid resolution of March 12, 1959. The parties to this action, all of whom having signed this agreement, will join in executing a praecipe dismissing this action with prejudice and without costs to either party.

~~3. -- This Agreement will be published as soon as possible in the "Capital Baptist" in an issue to be circulated among all of its~~

WBA 3 Any reproduction or reprinting of this agreement shall be of the entire
MCS
JMF agreement.
SLM, Jr.

~~subscribers and readers as fully as any other regular edition of this publication. -- The Agreement will be printed and published in full, without any underlining, or italicizing, or emphasis given to any comment or word or phrase or portion thereof. -- It is further agreed that any comment or editorializing to be made regarding the disposition of this case shall be done only upon the concurrence and agreement of the attorneys of record of both parties as to the language of the comment or editorial. -- The Temple Hill Baptist Church shall have the right to purchase from the~~

WBA printer, McDonald & Eudy, as many copies of the publication of "Capital
MCS Baptist" containing this Agreement as the said Church desires, provided,
JMF of course, that it pays for these copies. -- The District of Columbia
SLM, Jr.

~~vided, of course, that it pays for these copies. -- The District of Columbia Baptist Convention shall also have the right to order and use additional copies. -- The parties hereto shall not reprint this Agreement or cause it to be reprinted, either in whole or in part.~~

4. The parties hereto intend that by this Agreement they have finally resolved the differences and disputes that have existed between them and to this end the parties mutually release each other from all claims, demands, causes of action, suits and the like now between them; and they further agree to obtain within 10 days hereof similar releases from the Temple Hill Baptist Church and the District of Columbia Baptist Convention.

5. All the parties are joining in this agreement for the purpose of ending the unhappy litigation which has extended over the past five years and of insuring that there will be no further such litigation, which litigation has been as follows:

(a) William B. Adams v. John M. Firmin, S. Lewis Morgan, Jr., and M. Chandler Stith, Civil Action No. 1025-59, referred to above.

(b) William B. Adams v. Alvin O. West, Civil Action No. 3201-59 in the United States District Court for the District of Columbia, dismissed March 31, 1960, dismissal affirmed, October 3, 1960, No. 15, 826 in the United States Court of Appeals for the District of Columbia Circuit, petition for rehearing denied, November 30, 1960, petition for certiorari denied by the Supreme Court of the United States on March 20, 1961, No. 768, October Term 1960;

(c) Trustees of Temple Hill Baptist Church v. Frank K. Brasington, et al., Civil Action No. 3333-59 in the United States District Court for the District of Columbia, dismissed March 31, 1960, dismissal affirmed November 2, 1960, No. 15, 767 in the United States Court of

Appeals for the District of Columbia Circuit;

(d) Trustees of Temple Hill Baptist Church v. Frank Brasington, et al, Law No. 9676 in the Circuit Court for Montgomery County, Maryland, dismissed July 8, 1963;

(e) Temple Hill Baptist Church v. Lee M. Clarke, M. Chandler Stith, and District of Columbia Baptist Convention, Civil Action No. 1843-60, counterclaims by District of Columbia Baptist Convention against Temple Hill Baptist Church, complaint dismissed March 4, 1964; Counterclaims dismissed March 10, 1964;

(f) Alvin O. West v. Claude L. Dawson, et al, Civil Action No. 104-61 in the United States District Court for the District of Columbia, summary judgment for defendant Dawson, May 15, 1961, affirmed by the United States Court of Appeals for the District of Columbia Circuit, December 18, 1961, dismissed for lack of prosecution as to remaining defendants.

Dated: March 11, 1964

/s/ William B. Adams
William B. Adams
Plaintiff.

/s/ John M. Firmin
John M. Firmin
Defendant.

/s/ S. Lewis Morgan, Jr.
S. Lewis Morgan, Jr.
Defendant.

/s/ M. Chandler Stith
M. Chandler Stith
Defendant.

PLAINTIFF'S EXHIBIT #3

TWINBROOK BAPTIST CHURCH

1001 Twinbrook Parkway

Rockville, Maryland 20851

Phone 424-6524

April 2, 1965

Minister
John William Laney

Moderator
Christopher L. Henderson

Dear County Council Members:

It was with stunned disbelief that I heard that the Rev. William B. Adams had been appointed to the Montgomery County Human Relations Commission by unanimous action of the County Council. Surely this does not reflect your considered judgement, but rather a lack of information regarding the man who was appointed.

It has already been pointed out that some members of the County Council did know of Mr. Adams' participation in the rally for Alabama Gov. George C. Wallace. I am convinced that there is far more which the Council members did not know about him.

Were Council members aware of Mr. Adams' record in the community during his pastorate of the First Baptist Church of Rockville, particularly at the time his pastorate ended there? Did they seek any evaluation of Mr. Adams by those who were in the church at that time or who

knew of him in the community? I feel that this might have been most revealing.

Was the Council aware of the fact that some of Mr. Adams' later activities were considered so divisive and distasteful by the District of Columbia Baptist Convention that the Convention, (in 1959) with several hundred delegates of the member churches participating, took action, with no negative votes recorded, to terminate the membership in the Convention of his present church, Temple Hill Baptist? Were you aware of the fact that the District of Columbia Baptist Pastors Conference formally voted him out of their organization?

Did you know that suits were instigated by either Mr. Adams or the trustees of his church against various officers of the D. C. Baptist Convention, the Executive-Secretary of the Convention, the Convention's attorney and the individual members of the Executive Committee of the Convention?

The District of Columbia Baptist Convention, with more than fifty churches in the District and suburban Maryland, is represented in Montgomery County by such churches as First Baptist of Wheaton, First Baptist of Silver Spring, Bethesda First Baptist, First Baptist of Gaithersburg, Montgomery Hills Baptist, Clifton Park Baptist, etc.

To the best of my knowledge, the church of which Mr. Adams is now pastor is not officially recognized by any denominational body.

I am confident that Mr. Adams does not have the respect of the

clergy or of the laity of this County. Consultation with the various ministerial groups of the County should bear this out.

I would strongly urge you to reconsider and to recall this appointment which I feel the members of the Council would not have consented to originally had you known more of the proposed candidate.

Sincerely,

/s/ John W. Laney

JWL/amd

Filed Oct. 11--1965. Harry M. Hull, Clerk

* * * *

MOTION TO SET ASIDE AND VACATE A VOLUNTARY
DISMISSAL AND TO RESTORE CAUSE TO THE TRIAL
CALENDAR

Comes now the plaintiff, William B. Adams, and moves this Honorable Court to set aside and vacate the Praecept of Dismissal entered herein, vacate the judgment of dismissal entered thereupon, and permit this case to be placed on the trial calendar for trial upon its merits, and in support thereof states as follows:

1. The plaintiff is pastor of the Temple Hill Baptist Church, Bethesda, Maryland, and a member of the Board of Directors of that Church. The defendants are officers of the District of Columbia Baptist Convention. The instant case is a suit for libel brought by the plaintiff against the defendants because of the publication by them of a libelous resolution regarding the plaintiff's professional qualifications and standing.
2. On March 11, 1964, at the suggestion of the trial judge, the parties conferred and negotiated and eventually reached an agreement. A consent order was filed on that date. Upon the basis of the agreement, plaintiff filed a Praecept of dismissal in this action.
3. Pursuant to the terms of that agreement, the defendants were to, among other things, make every effort to effectuate the rescinding and cancellation of the resolution adopted by the Convention on November 17, 1959, terminating the membership of the Temple Hill Baptist Church in

said Convention and to obtain within ten (10) days after March 11, 1964, a release from the District of Columbia Baptist Convention. These things were to be done by the defendants in good faith in settlement of a libel action.

4. The defendants have failed to perform their duties under the agreement and have failed to demonstrate to the plaintiff that a good faith effort has been made to perform them. On the contrary, plaintiff has cause to believe the defendants purposely failed to live up to said agreement, causing the plaintiff to cancel said agreement and move this Court to place the case on the trial calendar for trial on the merits.

WHEREFORE, Plaintiff prays that the Praecipe of dismissal be vacated, together with the judgment thereon, and that this cause be restored to the trial calendar for trial.

/s/ Lawrence D. Huntsman
Lawrence D. Huntsman,
Attorney for Plaintiff, 1101 - 17th
Street, N. W., Washington, D.C.

/s/ John A. Shorter, Jr.
John A. Shorter, Jr.,
Attorney for Plaintiff, 508 Fifth
Street, N. W., Washington, D.C.

Filed Oct 11. --1965. Harry M. Hull, Clerk

* * * *

POINTS AND AUTHORITIES IN SUPPORT OF
MOTION TO SET ASIDE AND VACATE A VOLUNTARY
DISMISSAL AND TO RESTORE CAUSE TO THE TRIAL
CALENDAR

1. The record in this case; and
2. The Agreement entered into by the parties.

/s/ Lawrence D. Huntsman
Lawrence D. Huntsman,
Attorney for Plaintiff, 1101 - 17th
Street, N. W., Washington, D. C.

/s/ John A. Shorter, Jr.
John A. Shorter, Jr.,
Attorney for Plaintiff, 508 Fifth
Street, N. W., Washington, D. C.

Filed Nov. 18--1965. Harry M. Hull, Clerk

* * * *

ORDER

This cause having come on to be heard on plaintiff's motion to set aside and vacate a voluntary dismissal and to restore cause to the trial calendar, and the Court having heard argument of counsel for the respective parties, and it appearing to the Court that disposition of said motion requires a clarification of the issues and the taking of oral testimony, it is by the Court this _____ day of November, 1965,

ORDERED, that the hearing on plaintiff's said motion to set aside and vacate a voluntary dismissal and to restore cause to the trial calendar

be and it is hereby continued to December 16, 1965, for hearing on oral testimony in Motions Court No. 2 (Long Motions); and it is further

ORDERED, that the respective attorneys for the plaintiff and for the defendants shall each within one week file with the Clerk, serving a copy on opposing counsel, a statement specifying those provisions in the agreement between the parties dated March 11, 1964, which it is alleged the opposing party or parties have not complied with, stating in what respects those things which were done by the opposing party or parties allegedly fell short of full compliance with said agreement.

/s/ Joseph C. McGarraghy
Judge

Filed Nov. 24--1965. Harry M. Hull, Clerk

* * * *

STATEMENT OF PLAINTIFF AS TO PROVISIONS
IN SETTLEMENT AGREEMENT NOT COMPLIED
WITH BY DEFENDANTS

The defendants in this action have failed to comply with the provisions of a settlement agreement reached by the parties simultaneously with the dismissal of this action voluntarily by Praecipe, in the following respects:

1. The individual defendants failed in good faith to make every effort to effectuate the rescission and cancellation of the resolution of March 12, 1959, of the Executive Committee of the District of Columbia Baptist Convention in the following respects:

a. The rescision and cancellation of the resolution of March 12, 1959, could only be effectuated by a vote of the entire Executive Committee. Such a vote was never taken and the membership of the Executive Committee was never informed as to the action being taken by the Committee, but the token compliance with this provision of the agreement was completed by a small group within the Committee, made up in part by the individual defendants.

b. The action of the Executive Committee in rescinding and cancelling the resolution of March 12, 1959, if there had been such an action, would then have to be presented to the Executive Board of the District of Columbia Baptist Convention for a vote and approval. This was never done.

c. Only after action of the Executive Board in either approving or disapproving the action of the Executive Committee, would the matter of rescision and cancellation and expunction be placed before the Convention. Thus, the Convention could not and has not acted upon this rescision and cancellation.

2. The individual defendants pledged in good faith to make every effort to effectuate the rescision and cancellation of the resolution adopted by the Convention on November 17, 1959, terminating the membership of the Temple Hill Baptist Church in the Convention. The question or motion with respect to the rescision and cancellation of that resolution was never read before the Convention; therefore, the Convention was

never made aware of the action expected of it and therefore publication of the settlement of this action and its withdrawal of the termination of the membership of this particular church, was never made to the members of the Convention.

3. Paragraph 2 further provides that the defendants would take appropriate steps to have the Executive Committee of the District of Columbia Baptist Convention expunge from its records the resolution of March 12, 1959. When that resolution was adopted by the Committee, it was then taken to the Board, which gave blind approval to it and, in turn, it was taken, then, to the Convention, which, in turn, gave blind approval to the resolution. In order to expunge from the records of the Committee, the resolution of March 12, 1959, that Committee will, in turn, have to take its expunction to the Board and, in turn, to the Convention for approval, since those bodies approved the action of the Committee contained in its records. This was never done.

4. Paragraph 4 of the agreement provides that within ten days of the date thereof, a release from the District of Columbia Baptist Convention would be provided to the plaintiff. Since the Convention can only act as a body, such a release would have to be the result of a motion on the floor and a vote thereon. This was never done and, therefore, a valid release from the Convention was never provided to the plaintiff. The spurious release that was provided was not provided within the ten

days required.

/s/ John A. Shorter, Esq.
John A. Shorter, Esq.,
Attorney for Plaintiff, 508 Fifth
Street, N. W., Washington, D. C.

/s/ Lawrence D. Huntsman, Esq.
Lawrence D. Huntsman, Esq.,
Attorney for Plaintiff, 1101 - 17th
Street, N. W., Washington, D. C.

Filed Feb. 21--1966. Harry M. Hull, Clerk

* * * *

ORDER

This cause having come on to be heard on plaintiff's motion to set aside and vacate a voluntary dismissal with prejudice, agreed to by all the parties, and to restore cause to the trial calendar, and on defendants' motion for security for costs and contingent motion to place this cause at top of Ready Calendar, and the Court having heard argument of counsel for the respective parties, and having reviewed the pleadings, depositions and memoranda, it is by the Court this 21st day of February, 1966,

ORDERED that plaintiff's motion to set aside and vacate a voluntary dismissal and to restore cause to the trial calendar be, and the same is hereby denied; and it is

FURTHER ORDERED, that defendants' motion for security for costs and contingent motion to place this cause at top of Ready Calendar be, and the same are hereby dismissed as moot.

/s/ Oliver Gasch
Judge

SUPPLEMENTAL JOINT APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,184

William B. Adams,

Appellant

v.

John M. Firmin,

S. Lewis Morgan, Jr.,

and

M. Chandler Stith,

Appellees

Appeal from an Order of the United States District
Court for the District of Columbia

United States Court of Appeals
for the District of Columbia Circuit

FILED OCT 25 1966

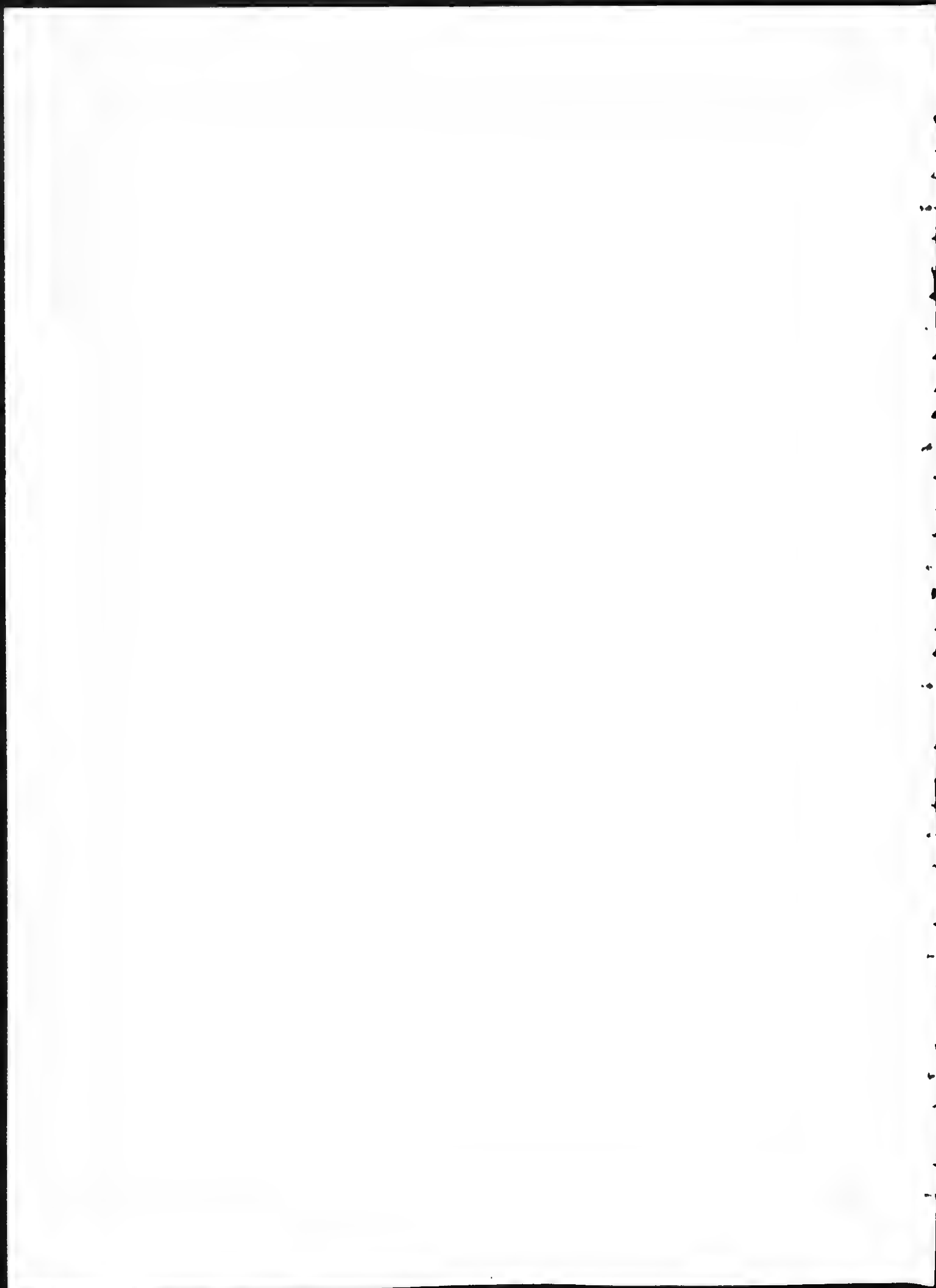
Nathan J. Paulson
CLERK

Lawrence D. Huntsman
1101 Seventeenth Street, N.W.
Washington, D. C. 20036

Attorney for Appellant

Alvin O. West
815 Fifteenth Street, N.W.
Washington, D. C. 20005

Attorney for Appellees



SUPPLEMENTAL JOINT APPENDIX

CIVIL DOCKET

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

<u>Date</u>	<u>Proceedings</u>	
1959		
Apr. 9	Complaint appearance Jury Demand, Exhibit "A"	Filed.
Apr. 9	Summons, copies (3) and copies (3) of Complaint issued #1 ser. 4-13-59; #2 ser. 4-15-59	
Apr. 18	Motion of pltf. for order that deposition not be taken or, in the alternative that deposition be taken at later time and different place; P & A; c/m 4-18-59; M. C. 4-18-59	Filed.
Apr. 20	Notice by defts. for taking deposition of pltf.; c/m 4-13-59; appearance of Alvin O. West as atty for defts.;	Filed.
Apr. 22	Opposition of deft. to pltf's. motion that deposition not be taken or in the alternative that time and place be changed; c/m 4-21-59;	Filed.
Apr. 22	Motion of defts. for security for costs; P and A; c/m 4-21-59; M. C. 4-22-59;	Filed.
Apr. 28	P and A of pltf. re motion for security for costs; c/m 4-27-59;	Filed.
Apr. 30	Order setting deposition of pltf. in office of Claude L. Dawson at 10:00 AM on May 4, 1959; authorizing only pltf, defts, and counsel, as well as Notary to be present at deposition. (N) Holtzoff, J.	
May. 4	Answer of defts. to complt; ser. acknowledged; 5-4-59; Appearance of Alvin O. West as atty for defts.	Filed.
May. 4	Calendared (N)	
May. 6	Order for security for costs; \$50.00 cash or \$100.00 bond; within 15 days. (N) Holtzoff, Jr.	

DateProceedings

May. 19	Deposit by pltf. \$50.00 cash security for costs per order	Filed.
Jun. 25	Deposition of pltf., 5-4-59. (\$144.10 paid be defts.)	Filed.
July 22	Motion of defts for summary judgment; c/m 7-20-59; affidavit; P & A; M. C. ;	Filed
July 23	Change of address of deft's atty to 1411 K St., N. W. per atty;	Filed.
Aug. 1	Motion of pltf for summary judgment in part; c/m 7-31; affidavit; exhibit "A"; P. & A. in support of pltf's motion and in opposition to deft's motion for Summary Judgment; M. C. 9-29-59	Filed.
Aug. 12	P and A of defts in opposition to pltf's motion for summary judgment in part; c/m 8-6-59;	Filed.
Aug. 31	Motion of defts to compel answers by to questions on oral examination; Exhibit "A" (affidavit in support); P & A; c/m 8-28-59; M. C. 8-31-59;	Filed.
Sept. 3	Reply of pltf to defts motion to compel answers by pltf to questions propounded on oral examination; c/m 9-2-59;	Filed.
Oct. 5	Supplemental brief of pltf; affidavit; c/m 10-2-59.	Filed.
Oct. 8	Order denying deft's motion for summary judgment; denying pltf's motion for partial summary judgment; granting deft's motion to comple answers on oral examination. (N) McGarraghy, J.	
Oct. 8	Called Curran, J.	
Oct. 8	Order granting deft to and including December 7, 1959 to complete discovery and file a cert. of readiness. (N) Curran, J.	
Oct. 13	Motion of defts for allowance of expenses; c/m 10-9-59; P & A; MC. 10-13-59.	Filed.
Oct. 13	Notice of defts to take deposition of pltf; c/m 10-9-59.	Filed.

Oct. 22	Reply of pltf to motion of deflt for allowance of expenses; c/m 10-22-59.	Filed.
Oct. 28	Order denying motion of defts for allowance of costs. (N) McGarraghy, J.	
Nov. 13	Motion of deflt to compel production of documents and to extend time for completing discovery; P & A; c/m; M. C.	Filed.
Nov. 19	Deposition of pltf, 10-14-59; (\$29.70 paid)	Filed.
Nov. 19	Opposition of pltf to motion of defts to compel production of documents and to extend time, etc; c/m 11-18-59.	Filed.
Dec. 1	Order extending time for defts to complete discovery and file a certificate of readiness to Jan. 29, 1960. (N) Keech, J.	
Dec. 10	Order directing plaintiff to produce certain records for inspection and copying. (N) Keech, J.	
Dec. 23	Motion of pltf to require defts to take deposition of Alger W. Geary; statement in support; c/m 12-22-59 M. C. 1-9-60	Filed.
Dec. 28.	Opposition of defts to motion to require defts to take deposition of Alger W. Geary; c/m 12-24-59	Filed.
Dec. 31	Notice of defts to take deposition of Alger W. Geary on written interrogatories; interrogatories attached; ser. ak.	Filed.
1960		
Jan. 9	Motion of defts for order enforcing full compliance with order for production of documents and also requiring further production of documents, or in the alternative, to dismiss the action; Exhibit A. c/m P & A; M. C. 1-9-60.	Filed.
Jan. 16	Motion of defts to extend time for completing discovery; c/m 1-15-60; P & A; M. C. 1-15-60.	Filed.
Jan. 18	Order denying pltf's motion to require defts to take deposition of Alger W. Geary on oral interrogatories. (N) Curran, J.	

Jan. 20	Opposition of pltf to motion of defts for order enforcing full compliance with order for production of minutes; c/m 1-19-60; affidavits; exhibit "B".	Filed.
Jan. 22	Opposition of pltf to def't's motion to extend time for completing discovery; c/m 1-21-60	Filed.
Jan. 22	Motion of defts to strike cross-interrogatories; c/m 1-21-60; P & A; M.C. 1-22-60.	Filed.
Jan. 25	Reply of pltf to def't's motion to strike cross-interrogatories; c/m 1-25-60.	Filed.
Jan. 26	Motion of defts to strike scandalous matter from pltf's P & A in opposition to def't's motion to enforce compliance and to strike scandalous matter from affidavit; P & A affidavit; c/m 1-25-60; M.C. 1-26-60.	Filed.
Jan. 28	Additional authorities in re: motion of defts for an order enforcing full compliance with order for production and also ordering further production or, in the alternative, dismissing the action; c/m 1-27-60.	Filed.
Jan. 30	Opposition of pltf. to motion of defts. to strike alleged scandalous matter from the affidavit of pltf; c/m 1-29-60.	Filed.
Feb. 16	Order extending time within which defts. shall complete discovery & file certificate of readiness to & including 3-29-60. (N) Youngdahl, J.	
Feb. 16	Order striking cross-interrogatories 7, 13, 14, 15 & 18. (N) Youngdahl, J.	
Feb. 17.	Order denying def't's motion to strike scandalous matter from plaintiff's points and authorities, without prejudice. (N) Youngdahl, J.	
Feb. 17	Order dismissing motion of defts for order enforcing full compliance with order for production of documents, the order having now been complied with. (N) Youngdahl, J.	
Mar. 2	Deposition of M. Chandler Stith, 2-8-60; pp.1-38; notice.	Filed.

Mar. 3	Deposition of Alger W. Geary on written interrogatories and cross-interrogatories; certificate; \$5.00; exhibit; published & filed	
Mar. 11	Notice of deft. to file deposition of Alger B. Geary; c/m 3/9.	Filed.
Mar. 28	Certificate of readiness. (N/AC)	Filed.
May 11	Transcript of proceedings of 2-16-60, pp. 1-3. (reported by D. Copeland.)	Filed.
Oct. 5	Motion of deft. to dismiss; c/m 10-5-60; P&A; M. C. 10-5-60. (FIAT) Tamm, J.	
Oct. 12	Opposition of pltf to motion to dismiss; c/m 10-11-60.	Filed.
Oct. 27	Order denying without prejudice deft's motion to dismiss (N) McLaughlin, J.	
Dec. 2	Appearance of Joseph G. Weeda as atty for pltf. AC/N	Filed.
Dec. 2	Pretrial statement of pltf.	Filed.
Dec. 2	Supplemental Pretrial statement of pltf.	Filed.
Dec. 2	Pretrial statement of defts.	Filed.
Dec. 2	Pretrial Proceedings (signed 12-1-60) Asst. Pretrial examiner	
Dec. 15	Order removing cause from ready calendar and pltf to file amended complaint (signed 12-13-60) N/AC (N) Tamm, J.	
Dec. 15	Transcript of oral ruling of court.	Filed.
Dec. 19	Transcript of oral ruling of the Court, Dec. 7, 1960; (Reporter, Eva Marie Sanche); pp 1-3.	Filed.
1961		
Jan. 10	Motion of pltf to produce documents now in hands of defts; c/m 1-5-61, P&A; M. C.	Filed.
Jan. 12	Motion of pltf for permission to file amended complaint; exhibit; M. C. 1-12-61.	Filed.

Jan. 17	Opposition of defts to pltfs motion for production of documents; c/m 1-16-61.	Filed.
Jan. 24	Opposition of defts. to motion for leave to file amended complt. C/M 1-19-61	Filed.
Jan. 24	Interrogatories to pltff. C/M 1-19-61	Filed.
Jan. 26	Objections of pltff. to interrogatories; c/m 1-25-61; M. C. 1-26-61.	Filed.
Feb. 3	Points and authorities of defts in opposition to pltff's ob- jection to interrogatories served by defts; c/m 2-2-61.	Filed.
Feb. 11	Notice by pltf to take deposition of Arland W. Benningfield; c/m 2-10-61.	Filed.
Feb. 11	Notice by pltf to take deposition of Frank L. Squires; c/m 2-10-61.	Filed.
Feb. 11	Notice by pltf to take deposition of Alva Lincoln Smith; c/m 2-10-61.	Filed.
Mar. 2	Order granting plaintiff's motion for permission to file amended complaint withdrawn and new amended complaint to be filed within 10 days; and granting plaintiff's motion for production of documents; and denying plaintiff's ob- jections to defts' interrogatories without prejudice, said interrogatories shall be answered after filing of amended complaint. (N) Walsh, J..	
Mar. 3	Notice of pltff. to take deposition of Clinton N. Hemmings; c/m 3-2.	Filed.
Mar. 10	Notice by pltff. to take deposition of Frank L. Squires; c/m 3-9-61.	Filed.
Mar. 11	Second amended complaint; jury demand; c/m 3-10-61.	Filed.
Mar. 14	Notice by pltff. to take deposition of Frank L. Squires; c/m 3-13-61.	Filed.
Mar. 16	Deposition of Clinton N. Hemmings published.	Filed.
Mar. 20	Answer of defts. to second amended complt; c/m 3-20-61	Filed.

Mar. 22	Motion of pltf. to grant to pltf. immunity from service; statement; c/m 3-20-61; notice.	Filed.
Mar. 24	Order denying motion for immunity from service of civil process. (N) Walsh, J.	
Apr. 3	Deposition of Frank L. Squires by pltff; published and filed.	Filed.
Apr. 28	Withdrawal of Claude L. Dawson as counsel for pltf. (fiat) Youngdahl, J.	
May 1	Motion of defts. to dismiss or for summary judgment; statement of facts; c/m 4-29-61; P & A; M.C. 5-1-61.	Filed.
May 2	Motion of defts. to dismiss; c/m 5-1; P & A; M.C.	Filed.
May 18	Appearance of Welch, Daily and Welch for pltff.	Filed.
May 18	Stipulation extending to and including 5-22-61 time for pltff. to file opposition to defts' motions now pending.	Filed.
Jun. 1	Extension to and including 6-5-61 of time for pltff. to file opposition to deft's motions.	Filed.
Jun. 6	Opposition of pltff. to motion of defts. to dismiss or for summary judgment. c/m 6-5-61	Filed.
Jun. 6	Opposition of pltff. to motion to dismiss; c/m 6-5-61.	Filed.
Jul. 11	Motion of defts to dismiss or for summary judgment argued and submitted (Rep: E. M. Sanche) Tamm, J.	
Jul. 14	Answer of pltf to interrogatories; c/m 7/13/61	Filed.
Jul. 19	Order denying motion to dismiss or for summary judgment (N) Tamm, J.	
Jul. 24	Order adjudicating pltf in contempt, sentencing to a fine of \$100.00 and suspending same (N) Tamm, J.	
Jul. 27	Transcript of proceedings 7/11/61 (Rep: E. M. Sanche) (Court copy)	Filed.
Aug. 24	Interrogatories of defts to pltf; ser ack 8/23/61	Filed.

Aug. 24 Notice by defts to take deposition upon written interrogatories;
copy of interrogatories attached Filed.

Sep. 16 Notice of defendants to take deposition of Mrs. J. T. Jarman
Captain J. T. Jarman, Eliz. Mitnik, Raborn, M. Lazarus &
Ruth A. Lazarus. c/m 9-15-61 Filed.

Sep. 28 Deposition of Donald M. Loudermilk by defts; Published
and filed.

Oct. 6 Notice of defts of filing of deposition of Donald M. Loudermilk;
c/m 10/5/61 Filed.

Oct. 18 Deposition of J. T. Jarman, Elizabeth Mitnik Raborn, Ruth A.
Lazarus and Elmer Miles Lazarus by deft. Filed.

Oct. 31 Motion of defts to consolidate with CA 1843-60 for trial;
P&A; c/m 10-3-61; M.C., 10-31-61 Filed.

Nov. 22 Order consolidating CA 1025-59 and CA 1843-60 for trial
(N) AC/N McGarraghy, J.

Dec. 13 Motion of defts to dismiss; c/m 12-13-61; P&A, MC12-13-61.
Filed.

Dec. 22 Opposition of pltf to deft's motion to dismiss; c/m 12-20-61 Filed.

1962

Jan. 8 Reply of defts to pltf's opposition to motion to dismiss; c/m
1-8-62 exhibit A Filed.

Jan. 12 Answers of pltf to interrogatories; c/m 1-10-62 Filed.

Jan. 20 Motion of defts to strike answers to interrogatories;
c/m 1-19-62; P&A; M.C. 1-20-62

Feb. 9 Opposition of pltf to defts motion to strike pltf's answers to
interrogatories; c/m 2-8-62 Filed.

Feb. 9 Motion of defts for production of documents; c/m 2-9-62;
P&A; M.C. 2-9-62 Filed.

Feb. 10 Interrogatories of defts to pltf; c/m 2-9-62 Filed.

Mar. 20 Order denying motions of defts to dismiss and to strike
pltf's answers to interrogatories. (N) Sirica, J.

Aug. 20	First notice under Rule 13	
Sept. 13	Certificate of readiness of plaintiff; c/m 9-12-62.	Filed.
Sept. 21	Objections of deft. to certificate of readiness; c/m 9/21/62; MC 9/21/62.	Filed
Sept. 27	Motion of plaintiff to withdraw certificate of readiness; c/m 9-25-62.	Filed.
Oct. 16	Consent Order granting motion to withdraw Certificate of Readiness and extending time for certifying cause to Ready Calendar. (N) Walsh, J.	
Dec. 5	Motion of defts to sever actions previously consolidated; c/s 12-5-62; P & A; MC 12-5-62	Filed.

1963

Jan. 15	Order severing CA 1025-59 & CA 1843-60 for trial (N) (AC/N) Jones, J.	
July 5	Certificate of Readiness of pltf; c/m 7/5/63.	Filed.
Sep. 25	Stipulation re degree conferred upon pltf.	Filed.

1964

Jan. 10	Withdrawal of appearance of Welch, Daily and Welch as attorneys for pltf; c/m 9-16-63 (AC/N)	Filed.
Jan. 10	Appearance of John A. Shorter, Jr., as attorney for pltf. c/m 1-10-64. (AC/N)	Filed.
Mar. 11	Cause settled and dismissed with prejudice and without costs per all counsel. (AC/N)	Filed.
July 22	Order to transfer \$50.00 to the Registry (Unclaimed Balance) filed 7-21-64. McGarraghy, J.	
July 22	Transferred to the Registry (Unclaimed Balances) \$50.00 by US Treasury check #2495 pursuant to order of Court filed 7-21-64.	

1965

- July 15 Motion of pltf to set aside and vacate praecipe of dismissal and restore cause to trial calendar; c/m 7/14/65. M.C. 7/15/65 Filed.
- July 23 Opposition of defts to motion of pltf to set aside and vacate praecipe of dismissal; c/m 7/22/65. Filed.
- July 30 Change of address of Alvin O. West to 815 15th St., N.W. Filed.
- Sep. 23 Order dismissing without prejudice motion to set aside and vacate praecipe of dismissal and to restore cause to trial calendar. (N) Holtzoff, J.
- Oct. 11 Motion of pltf to set aside and vacate a voluntary dismissal and restore case to trial calendar; P&A c/m 10/8/65. M.C. 10/11/65. Filed.
- Oct. 13 Opposition of defts to pltf's motion to set aside and vacate a voluntary dismissal and restore cause to the trial calendar; c/m 10/13/65. Filed.
- Nov. 19 Order continuing motion to set aside and vacate voluntary dismissal to Dec. 16, 1965 for hearing in Motions Court #2; counsel to file statements within one week. (N) McGarraghy, J.
- Nov. 26 Statement of pltf as to provisions in settlement agreement; c/m 11/24/65. Filed.
- Dec. 7 Motion of defts for security for costs and contingent motion to place cause on ready calendar; P&A; c/m 10/13/65. M.C. 12/8/65. Filed.

1966

- Feb. 21 Order denying motion of plaintiff to set aside dismissal and restore cause to Ready Calendar; dismissing as moot defendant's motion for security for costs and contingent motion to place cause at top of Ready Calendar. (N) Gasch, J.
- Mar. 22 Notice of appeal of pltf; Deposit by Shorter \$5.00. (Notice mailed to Alvin O. West.) Filed.

Apr. 5	Motion of defts to set immediate time for pltf to post appeal bond to require pltf to file a transcript of final hearing, and to complete the record on Appeal; P&A's ; c/m 4/4/66; M. C. 4/5/66.	Filed.
Apr. 7	Motion of pltf for extension of time to file transcript of testimony; P&A; and record on appeal; P&A; c/m 4/6/66. M. C. 4/7/66.	Filed.
Apr. 11	Cost Bond on appeal by pltf in the amount of \$250.00 with National Surety Corp., approved, (fiat) Keech, J.	
Apr. 12	Opposition of defts to motion of pltfs for extension of time to file transcript of testimony and record on appeal; c/m 4/11/66.	Filed.
Apr. 13	Transcript of proceedings of 2/10/66; pages 1 - 13; (Rep: Edna B. Romig) Court's copy.	Filed.
Apr. 15	Transcript of proceedings of 2/10/66; pages 1 - 13; (Rep: Edna B. Romig) Attorney's copy.	Filed.
Apr. 7	Appearance of Miller, Brown and Gildenhorn attys for pltf.	
Apr. 22	Order extending time for pltf to file statement of points to May 9, 1966; time to file record on appeal extended to May 16, 1966. (N) (Rep: E. Romig) Gasch, J.	
Apr. 22	Defts' exhibit #1 (22 documents)	Filed.
Apr. 27	Order dismissing as moot motions of defts to set time for pltf to post appeal bond to file transcript of final hearing and to complete record on appeal. (N) Gasch, J.	
May 6	Statement of points on appeal of pltf; c/m 5/5/66.	Filed.
May 16	Record on Appeal delivered to USCA. Deposit by Lawrence Huntsman \$4.25.	
May 16	Receipt from USCA for Original papers.	Filed.
Aug. 10	Exhibits 1, 2 & 3 of pltff.	Filed.
Aug. 12	Stipulation re supplemental record; exhibit #4 of pltff.	Filed.
Aug. 12	Exhibits 1, 2 & 3 of pltff.	Filed

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Filed March 11--1964. Harry M. Hull, Clerk

PRAECIPE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

the 11th day of March, 1964

WILLIAM B. ADAMS

vs.

JOHN M. FIRMIN, et al

)
) Civil
) Action No. 1025-59
)
)

The Clerk of said Court will please enter the above entitled cause as
"settled and dismissed" with prejudice and without costs to either party.

/s/ Alvin O. West, Attorney for Defendants

/s/ John Shorter, Attorney
for Plaintiff

/s/ John Firmin

/s/ William B. Adams

/s/ S. Lewis Morgan, Jr.

/s/ M. Chandler Stith

* * * * *

Filed Oct. 13--1965. Harry M. Hull, Clerk

DEFENDANTS' POINTS AND AUTHORITIES IN OPPOSITION
TO PLAINTIFF'S MOTION TO SET ASIDE AND VACATE
A VOLUNTARY DISMISSAL AND TO RESTORE CAUSE
TO THE TRIAL CALENDAR

Come now defendants, by their attorney, Alvin O. West, and,
for opposition to plaintiff's motion to set aside and vacate a voluntary dis-
missal and to restore cause to the trial calendar, state to the Court as

follows:

1. Although plaintiff's motion does not state which Rule he is proceeding under, presumably he is proceeding under Rule 60(b)(3), Federal Rules of Civil Procedure, in seeking relief from his voluntary dismissal of his complaint. However, plaintiff's motion is made more than one year after the dismissal of his action, and therefore it is not timely.

F.R.C.P. 60(b).

2. Defendants deny plaintiff's allegation that they have failed to perform those things which they undertook to do in the agreement between the parties, which agreement is not a part of the record in this case. Defendants allege that in fact they have done everything which they undertook to do in said agreement.

3. The relief sought by plaintiff being equitable in nature, plaintiff should have alleged that he has fully performed his part of the agreement to give him standing to complain of defendants' alleged failure to perform. Yet plaintiff's motion very carefully avoids any reference to his obligations under the agreement because, while he has performed in part, in one material respect he has failed to perform, i. e., his failure to obtain from Temple Hill Baptist Church within 10 days from March 11, 1964 a release of claims similar to that contained in said agreement. The release prepared and submitted by plaintiff personally varies in significant respects from the release in said agreement, is in conflict with the terms of the agreement, contains one provision which libels defendants, and is impro-

perly executed. Plaintiff's attorney later advised that he himself had prepared another release and promised to communicate further with defendants' attorney when that release had been duly executed and returned to him. However, no further communication regarding this second release has ever been received.

To avoid any possibility of misunderstanding arising from plaintiff's allegations that a "judgment of dismissal" was entered and a "consent order" was filed in this action on March 11, 1964, defendants point out that in fact the document filed on that date was a praecipe dismissing this action with prejudice and without costs to either party, signed by the parties and their respective attorneys, and that no judgment of dismissal or consent order was ever filed.

/s/ Alvin O. West
Alvin O. West
Attorney for Defendants
815 - 15th Street, N. W.
Suite 500
Washington, D. C. 20005

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing defendants' opposing points and authorities was mailed, postage prepaid, to Miller, Brown & Gildenhorn, 1101 Seventeenth Street, N. W., Washington, D. C., and John A. Shorter, Jr., 508 Fifth Street, N. W., Washington, D. C., attorneys for plaintiff, this 13th day of October, 1965.

/s/ Alvin O. West
Alvin O. West

Filed Nov. 26--1965. Harry M. Hull, Clerk

DEFENDANTS' STATEMENT OF ISSUES

In order to clarify the issues on plaintiff's motion to set aside and vacate a voluntary dismissal and to restore cause to trial calendar, pursuant to this Court's order of November 19, 1965 defendants submit herewith their statement of the issues on said motion:

FIRST ISSUE: Is this a timely motion under the provisions of Rule 60(b), Federal Rules of Civil Procedure?

FRCP 60(b) requires that a motion such as this "shall be made within a reasonable time" and, if based on misrepresentations or other misconduct of an adverse party (or certain other specified grounds), "not more than one year after the judgment, order, or proceeding was entered or taken."

Compliance with this Rule is, of course, the first issue which plaintiff meets. The delay here was from March 1964 to July 1965. No explanation for the delay is offered. Defendants contend that plaintiff's motion should have been made within one year but was not, and in any event it was not filed within a reasonable time. Cf. Mayfail Extrusion, Inc. v. Magee, 100 U.S. App.D.C. 48, 241 F.2d 453 (1957).

SECOND ISSUE: Has plaintiff obtained from the Temple Hill Baptist Church a release in favor of defendants and the District of Columbia Baptist

Convention similar to the release in Paragraph 4 of the agreement of March 11, 1964, as provided in said Paragraph 4?

Defendants contend that the purported release of the Temple Hill Baptist Church submitted by plaintiff does not comply with the provisions of Paragraph 4 of the agreement of March 11, 1964 for the following reasons:

1. The 4th paragraph of the Church release is directly inconsistent with Paragraph 3 of the agreement. The original Paragraph 3 was stricken from the agreement at plaintiff's request and a new Paragraph 3 substituted before the agreement was signed. The Church release incorporates language somewhat like the original Paragraph 3 which was stricken, and thereby contradicts the agreement as executed.

2. The concluding paragraph of the Church release libels defendants and the District of Columbia Baptist Convention by directly implying that they have committed acts of a criminal nature. This is a breach by plaintiff of Paragraph 4 of the agreement. Moreover, the publication of this libel by plaintiff and those acting with him provides the explanation for plaintiff's long delay in filing his present motion, as plaintiff was unquestionably waiting for the running of the one-year statute of limitations on this cause of action for libel before trying to re-open the present action.

3. Viewed as a whole, the Church release is not a "similar release" to that contained in Paragraph 4 of the agreement. The Paragraph 4 release is simple and concise, being stated in one short clause. On

the other hand, the Church release includes a long recital of the Church's understanding or interpretation of the agreement of March 11, 1964, implying that the officers of the District of Columbia Baptist Convention have been engaged in improper conduct (e. g. , 5th paragraph of Church release).

4. The Church release is not properly executed, in that it is signed by only one trustee when it should be signed by all trustees. Maryland law, under which the Church is incorporated, requires a minimum of four trustees for a church, plus the pastor, who by statute is a trustee by virtue of his office, a total of five trustees. Defendants understand that said Church in fact has a total of six trustees. A valid release would require the signatures of all trustees.

5. No assurance has ever been given by plaintiff that the congregation of the Temple Hill Baptist Church authorized execution of the Church release. Under Baptist polity and also under the articles of incorporation of said Church, action by the church congregation was necessary to authorize execution of a release on behalf of the Church.

/s/ Alvin O. West
Alvin O. West
Attorney for Defendants
815 15th Street, N. W.,
Suite 500
Washington, D. C. 20005

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing statement were mailed, postage prepaid, to John A. Shorter, Jr., Esq., 508 Fifth Street, N.W., Washington, D. C., and Miller, Brown & Gildenhorn, 1101 Seventeenth

Street, N.W., Washington, D.C., attorneys for plaintiff, this 26th day of November, 1965,

/s/ Alvin O. West
Alvin O. West

* * * * *

TRANSCRIPT OF PROCEEDINGS

February 10, 1966

P R O C E E D I N G S

THE CLERK: Adams v. Firmin, et al.

THE COURT: Mr. Huntsman, I want to make this preliminary statement. This is the size of the file in this case. It has been in this court for approximately six years. It is the kind of issue that ought not to be in the courts at all, in my judgment. I think the time that has been expended on this file, if devoted to the normal uses of religion, could have been utilized much more effectively. That isn't to say that the courts are not open to legitimate controversies. But this controversy was settled. I think it should remain settled. Now, the differences between the parties can obviously be resolved by men of good will. And the Court will assume that both litigants are men of good will.

Now what do you have to say to the contrary?

MR. HUNTSMAN: Your Honor, I don't know that the assumption is unfounded. However, to this point, the good will of the defendants has not been demonstrated toward the plaintiff.

THE COURT: The file doesn't reflect that, Mr. Huntsman.

I read this file until 11:30 last night. I read these depositions which go on and on with technical objections by your clients, or your predecessors as counsel.

Now let's be practical about this thing. Much too much time has already gone into these papers. I think that you gentlemen can resolve these slight differences that remain.

MR. HUNTSMAN: Your Honor, our contention is very simple, and our complaint is very simple, that we are before you on today. Our complaint is simple. I don't know that the resolution of it is simple. Our complaint is that the defendants did not publish this agreement and their rescission of this libel as contemplated by all parties at the time this agreement was reached.

THE COURT: Is that all?

MR. HUNTSMAN: That is our contention.

THE COURT: I will hear from Mr. West on it.

MR. WEST: May it please the Court, you have undoubtedly noticed, in referring to the copy of the agreement itself --

THE COURT: Yes, I have read that.

MR. WEST: -- that paragraph 3, which provided expressly for the publication of the agreement, how it should be done, what distribution should be made, and everything at some length, it is about a half page long, that paragraph in the typed agreement was stricken, and a new provision inserted by hand, at the bottom of page one.

THE COURT: Yes I noticed that with particularity.

MR. WEST: This we have felt represented the -- well, obviously it represented the agreement of the parties. That particular change was made in the last minutes before it was signed. It was made at the instance of plaintiff's attorney, and the change is made in his handwriting, because frankly, Your Honor, I insisted that the change be inserted in his handwriting and initialed by his client, and of course the defendants as well, so that there could never be the slightest question as to who had initiated this change and the participation of the plaintiff in it.

Now --

THE COURT: Who had the obligation of publishing the agreement?

MR. WEST: Well, there was to be no publication. The only provision here was that any reproduction or reprinting of this agreement shall be of the entire agreement.

THE COURT: I notice that the paragraph 3, as it is lined out, provided that it would be published in "The Capital Biptist." Now can you inform the Court as to what that publication is. Is that a publication controlled by your client?

MR. WEST: Well, in a sense, yes, sir.

THE COURT: Is it an official publication of the Baptist Convention?

MR. WEST: Yes, sir. Published about ten months a year or maybe eleven months a year.

THE COURT: By lining it out it seems to the Court that opposing party did not wish to have the publication made in the journal that is under the control of your clients.

MR. WEST: That was the agreement, yes, Your Honor.

THE COURT: And what is written in here is written in in the handwriting of your opponent?

MR. WEST: Of his then attorney.

THE COURT: "Any reproduction or reprinting of this agreement shall be of the entire agreement." Your position is that that does not obligate your clients to reproduce it in any particular journal? Or at all?

MR. WEST: That is right. And this, I might say, if the Court please, the whole matter of publication was one of the several points that was discussed at length in the negotiation of this agreement. Because paragraph 3 in its original form was inserted in the agreement and for other reasons also, but for that reason in particular, I was insisting that paragraph 5 be included in the agreement, which is a recital of the whole series of suits growing out of this same matter, and showing the outcome of them. In other words, the libel suits brought by plaintiff and by plaintiff's church had all been dismissed with the exception of this one suit. This is the one of the oddities of litigation. All the other suits have been dismissed for failure to state a claim. Appeal had been taken by the plaintiff in those cases -- that is, in the District; he did not appeal in the Maryland suit. The dismissal was affirmed on appeal and even petition for certiorari in one of

the cases and certiorari was denied.

It is my own feeling that, for the protection of my clients, that if there was to be any publication of a settlement agreement in this case that it should reflect the history of the entire controversy and what the disposition of the other cases was.

Well, when this last-minute change in the agreement was made -- well, it was first proposed to me. I was asked if I would agree to strike out paragraph 3. And I had to make a quick decision. It was the end of the day. We wanted to report back to Judge Tamm before he left the Court. I proposed the language of the new paragraph 3. It was agreed to almost immediately. The change was made; the agreement was signed.

Now the agreement itself does provide for certain steps to be taken by both parties. This obviously necessitated some action by them that would involve references to the disposition of this case. Full publication was made of those matters. In other words, they are included in the book of reports. There is a reference to it in the book of reports at the next Annual Convention of the District of Columbia Baptist Convention. That book of reports is Item No. 20, at which I numbered in pencil at the bottom. This is in the group that I submitted. The pages are marked there. The reference is to the action taken at the convention.

THE COURT: I noticed the resolution. Was the resolution passed permitting the Temple Hill Baptist Church to withdraw? They didn't want to have the record show that they had been forced out. Did that reso-

lution pass?

MR. WEST: Yes, Your Honor, it passed and it is reflected in the printed Annual.

THE COURT: Is that a final and complete action by the legislative body of the Baptist Church, or supervising body? I am not familiar with the --

MR. WEST: The Baptist Churches have a congregational organization so that each church is independent. But the Convention itself is likewise an independent organization and the members of the Convention, the churches as such are members of the Convention.

This particular church had previously been by action of the Convention dismissed from membership. And it was the desire of plaintiffs that that record be changed to reflect that that church had voluntarily withdrawn.

THE COURT: That action was taken by the Convention?

MR. WEST: Yes, Your Honor.

THE COURT: I will hear from Mr. Huntsman.

MR. HUNTSMAN: Your Honor, I think that Mr. West is misconstruing, and perhaps the Court is, my term of publication. I don't mean to refer to the paragraph in that agreement that was stricken out. I am talking about the spreading of the word, as anticipated by Doctor Adams at the time this thing was settled, that their action --

THE COURT: What paragraph of the agreement are you

referring to?

MR. HUNTSMAN: That their action had been rescinded. I am referring to all paragraphs of the agreement.

THE COURT: What specifically?

MR. HUNTSMAN: This agreement must be read in conjunction with the practices and the political makeup of this Convention, the board mentioned ~~therein~~ in that agreement and the committee mentioned in that agreement.

THE COURT: What is your explanation of the lining out of paragraph 3 and the substitution of this very brief note "Any reproduction or reprinting of this agreement shall be of the entire agreement"?

MR. HUNTSMAN: It was felt by Reverend Adams that if the rest of this agreement were kept, as he anticipated at the time it was made it would be kept by all parties, that particular paragraph would not be necessary because by the very mechanics of carrying forth the other provisions in that agreement publication would be so complete that there would be no question in anyone's mind of the terms of this agreement and the fact that the libelous action had been rescinded and canceled.

THE COURT: Mr. Huntsman, there was specific provision in this agreement for the publication of the matter in a named journal, the Capital Baptist, and that was lined out and initialed.

MR. HUNTSMAN: No question about it.

THE COURT: I don't think your point is well taken. I am going to deny your motion.

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MR. HUNTSMAN: No question about it.

THE COURT: I don't think your point is well taken. I am going to deny your motion.

* * * * *

RELEASE

The District of Columbia Baptist Convention, a District of Columbia religious corporation, for and in consideration of the release by the Temple Hill Baptist Church of all claims against said Convention and against John M. Firmin, S. Lewis Morgan, Jr., and M. Chandler Stith, hereby releases and forever discharges the said Temple Hill Baptist Church and William B. Adams from all claims, demands, causes of action, suits and the like, which it now has or now claims to have.

IN WITNESS WHEREOF, the said District of Columbia Baptist Convention has caused this release to be signed in its corporate name by Fred B. Rhodes, Jr., its President, and its corporate seal to be hereto attached, attested by Clinton Hemmings, its Secretary, this 19th day of March, 1964.

/s/ DISTRICT OF COLUMBIA BAPTIST
CONVENTION

By /s/ Fred B. Rhodes, Jr.
/s/ Fred B. Rhodes, Jr., President

Attest:

/s/ Clinton Hemmings
/s/ Clinton Hemmings, Secretary

* * * * *

9400 Wisconsin Avenue

Bethesda, Maryland

March 26, 1965

John A. Shorter, Jr., Esq.

508 - 5th St., N.W.

Washington, D.C.

My dear Mr. Shorter:

Both the Church and myself are glad that you are ready to move ahead and take immediate action in respect of the total failure of Alvin O. West and the defendants to keep the agreement of March 11th, 1964.

After the expiration of one year from the time of the agreement it is urgent that immediate action should be taken. We are glad that you recognize the priority of acting now, and we shall be pleased to know that this action will take precedence over any other case, which precedence is clearly indicated by the lapse of time since the agreement.

With every good wish,

/s/ Dr. William B. Adams

Enclosures: 3 pages stating
the reasons why the defendants
are in default

WBA:O

ARTICLES OF INCORPORATION
OF
TEMPLE HILL BAPTIST CHURCH

We, the undersigned, desiring to form a religious Corporation under the laws of the State of Maryland, and to that end do make and adopt the following articles of incorporation:

The name of the congregation shall be, "Temple Hill Baptist Church", and its location shall be 8500 Rockville Pike, Locust Hills, Montgomery County, Maryland.

The corporate affairs of the congregation shall be managed by a Board of Trustees, to be elected at such times and in such manner as the Consitution and By-Laws may prescribe; but all matters relating to the management of the affairs of the corporation shall be subject at all times to the control and action of the congregation.

ALVIN O. WEST

Attorney at Law

815 Fifteenth Street, N.W., Suite 500

Washington, D. C. 20005

393-2155

March 13, 1964

John A. Shorter, Jr., Esq.

Mitchell, Ellis & Shorter

508 Fifth Street, N.W.

Washington, D.C. 20001

Re: Adams v. Firmin, et al.

Dear Mr. Shorter:

The agreement disposing of the above case has been initialled and signed by Rev. S. Lewis Morgan, Jr., and two copies, completely executed are enclosed herewith.

For your information, a meeting of the Executive Committee of the District of Columbia Baptist Convention has been called for Tuesday, March 17. At that meeting the Executive Committee will be asked to rescind its resolution of March 12, 1959 which is the basis of the above action and to expunge said resolution from its records, as contemplated by the provisions of Paragraph 2 of the agreement.

The Executive Committee will also be asked to authorize the execution on behalf of the District of Columbia Baptist Convention of the general

release of claims against Rev. William B. Adams and Temple Hill Baptist Church as contemplated by Paragraph 4 of the agreement.

The proposed rescission of the Convention's resolution of November 17, 1959 will first be considered by the Executive Board, so that it will go to the Convention as a recommendation of the Board. There will be three meetings of the Board before the next annual session of the Convention. No decision has been made as to when this matter shall be taken up with the Board.

Sincerely,

/s/ Alvin O. West

Enclosures

* * * * *

March 15, 1964

The District of Columbia Baptist Convention

1628 - 16th Street, N.W.

Washington, D. C.

Attention: Dr. M. Chandler Stith,

Executive Secretary

Gentlemen:

The Temple Hill Baptist Church hereby makes its withdrawal as a member of the District of Columbia Baptist Convention, the same to be

effective as of April 12, 1960.

Very truly yours,

THE TEMPLE HILL BAPTIST CHURCH

By

* * * * *

MINUTES OF EXECUTIVE COMMITTEE

MEETING HELD MARCH 17, 1964 - 11:00 AM

The meeting was called to order at 11:12 AM by the Chairman, Rev. J. Ray Garrett. The opening prayer was led by Rev. H. Taylor Bowers. Members present: Mrs. Thelma DeMott, Mr. Horace L. Stevenson, Mr. Fred B. Rhodes, Rev. J. Ray Garrett, Mr. Charles F. McMinn, Rev. John W. Laney, Mr. Edward J. Fox, Lt. Col. Charles G. Johnson, Rev. H. Taylor Bowers. Also present were Attorney Alvin O. West, Dr. M. Chandler Stith and Miss Morris, Secretary of the Committee.

Chairman Garrett announced to the members that the meeting of the committee of March 7th, 1964, had recessed to meet again at the call of the chairman, for further consideration of litigation matters. He then called upon Attorney Alvin O. West to make a report to the committee. For the benefit of the members who were not present at the meeting of March 7th, Mr. West reviewed briefly the events of the previous meeting, stating that the committee had met at that time to consider a proposal submitted to him

by Mr. John A. Shorter, Jr., attorney for William B. Adams, said proposal to be a basis for an agreement designed to lead to a dismissal of the final legal action in a series of such actions. However, after a review of the provisions of the proposal, the committee had adopted a resolution, stating that the proposal for agreement was not acceptable.

With the case scheduled for trial the following Monday morning, the committee recessed to meet at the call of the Chairman to consider any further proposals or actions that might be deemed necessary. The meeting today has been called to consider the provisions of a new agreement.

Mr. Alvin O. West, attorney for the Convention, then read the full text of the agreement, dated March 11, 1964, initialed and signed by William B. Adams, John M. Firmin, S. Lewis Morgan, Jr., and M. Chandler Stith, pursuant to which Civil Action No. 1025-59 in the United States District Court for the District of Columbia had been terminated. A copy of the agreement is filed with the original of these minutes. Mr. West then referred to the provisions of Paragraphs 2 and 4 of the agreement which called for action by this committee in order to implement the letter and spirit of the agreement.

Mr. Horace Stevenson, seconded by Mr. Bowers, moved the adoption of the following resolutions:

RESOLVED, that in view of the agreement dated March 11, 1964 entered into by William B Adams, John M. Firmin, S. Lewis Morgan, Jr. and M. Chandler Stith, and of the dismissal of Civil Action No. 1025-59 in the United States District Court for the District of Columbia,

the Executive Committee hereby rescinds the resolution adopted by it on March 12, 1959 which is the basis of the aforesaid Civil Action No. 1025-59 and orders that said resolution be expunged from its records; and be it

FURTHER RESOLVED, that the President and Secretary of the District of Columbia Baptist Convention be and they hereby are authorized and directed to execute and deliver on behalf of and in the name of said Convention a general release of all claims, demands, causes of action, suits and the like which it now has against William B. Adams and the Temple Hill Baptist Church or either of them, said release to be delivered in exchange for a similar release from the Temple Hill Baptist Church to the Convention, John M. Firmin, S. Lewis Morgan, Jr., and M. Chandler Stith.

The motion for the adoption of the foregoing resolution was passed unanimously.

Mr. Bowers, seconded by Mr. Stevenson, moved that, in the light of said agreement dated March 11, 1964 and particularly Paragraphs 1 and 2 thereof, the Executive Committee approve the following resolutions and direct that, upon receipt of the written withdrawal of Temple Hill Baptist Church as a member of the District of Columbia Baptist Convention effective as of April 12, 1960, these resolutions and said written withdrawal be forwarded to the Executive Board with a proposal that the Executive Board recommend

these resolutions for adoption by the next annual session of this Convention:

RESOLVED, that the District of Columbia Baptist Convention hereby accepts the withdrawal of the Temple Hill Baptist Church as a member of said Convention, said withdrawal being effective as of April 12, 1960; and be it

FURTHER RESOLVED, that the District of Columbia Baptist Convention hereby rescinds and cancels the resolution adopted by it on November 17, 1959 terminating the membership of the Temple Hill Baptist Church in said Convention.

Following these actions of the Executive Committee, appreciation was expressed by the Committee for the services rendered by Mr. West in behalf of the Convention over this five year period of litigation.

There being no further business the meeting was adjourned at 12:10 PM. The closing prayer was led by Chairman J. Ray Garrett.

Respectfully submitted,

/s/ Ethel Morris, Secretary

* * * * *

MEMO RE WILLIAM B. ADAMS AND TEMPLE HILL BAPTIST CHURCH:

The attached two sheets were cut from the minute book of the Executive Committee of the District of Columbia Baptist Convention, they having been a part of the minutes of the meeting of March 12, 1959. The removal of these sheets from the minute book was done in my presence and under my supervision. I immediately took possession of these sheets and placed them in my file of papers relating to William B. Adams v. John M. Firmin, et al., Civil Action No. 1025-59 in the United States District Court for the District of Columbia.

The removal of these sheets from the minute book was authorized by the Executive Committee at a meeting on March 17, 1964, to implement the letter and spirit of an agreement dated March 11, 1964, between William B. Adams, John M. Firmin, M. Chandler Stith and S. Lewis Morgan, Jr.

/s/ Alvin O. West

RELEASE

In consideration of the Agreement entered into under date of March 11, 1964 between William B. Adams, Plaintiff and John M. Firman, S. Lewis Morgan, Jr. and M. Chandler Stith, Defendants, in its entirety but specifically in consideration of those parts of the Agreement which we understand as follows:

1. That the parties intend by this Agreement, they have finally resolved the differences and disputes that have existed between them,
and
2. That such a Release shall obtain within ten days from March 11, 1964 from the District of Columbia Baptist Convention,
and
3. That the said Defendants shall in good faith seek the rescinding and cancellation of a certain Resolution dated March 12, 1959 of the Executive Committee of the District of Columbia Baptist Convention which was the basis of a civil action known as 1025-59, and the Resolution adopted by the District of Columbia Baptist Convention November 17, 1959 terminating the membership of the Temple Hill Baptist Church in said Convention and that the aforesaid Resolution dated March 12, 1959 be expunged from the records of the Executive Committee of the District of Columbia Baptist Convention.

And Further

4. That the Agreement of March 11, 1964, aforesaid mentioned, will be

published as soon as possible in the "Capital Baptist" in an issue to be circulated among all of its subscribers and readers as fully as any other regular edition of this publication, and that the aforesaid Agreement will be printed and published in full, without any underlining, or italicizing, or emphasis given to any comment or word or phrase or portion thereof.

AND FURTHER THAT

5. Because we in good faith and Christian charity assume from the Agreement reached between the parties in said action that henceforth amicable relations shall exist between The Temple Hill Baptist Church and the District of Columbia Baptist Convention, and that such Agreement shall imply, and is so understood by the parties hereto, that no action, direct or indirect shall be undertaken by the District of Columbia Baptist Convention, its officials, or its representatives which would tend to discourage or disparage the efforts of The Temple Hill Baptist Church to flourish in the service of God nor which would tend to demean or otherwise disparage the Pastor of The Temple Hill Baptist Church, Doctor William B. Adams in the fulfillment of his proper obligations as an ordained Minister of the Gospel and his duties as Pastor of The Temple Hill Baptist Church.

NOW THEREFORE

For good and valuable consideration, The Temple Hill Baptist Church, a corporation, by the action of its Trustees, March 15, 1964, hereby releases, foregoes, waives and relinquishes any and all demands, claims, rights of suit, and causes of action, excepting if there be anything of a

criminal nature, that it may now have against John M. Firman, S.
Lewis Morgan, Jr. and M. Chandler Stith and the District of Columbia
Baptist Convention.

/s/ Charles T. Bell, Esq.,
Trustee
Secretary Pro Tem of the
Trustees
The Temple Hill Baptist
Church

* * * * *

ALVIN O. WEST

Attorney at Law

815 Fifteenth Street, N.W., Suite 500

Washington, D. C. 20005

393-2155

April 3, 1964

John A. Shorter, Jr., Esq.

Mitchell, Ellis & Shorter

508 Fifth Street, N.W.

Washington, D. C. 20001

Dear Mr. Shorter:

As I advised you in our telephone conversation on Monday, March 23,
I was holding a release executed by the President and Secretary of the
District of Columbia Baptist Convention, duly authorized by action of the
Executive Committee of the Convention, releasing all claims against Temple

Hill Baptist Church and William B. Adams, this action having been taken in furtherance of Paragraph 4 of the agreement of March 11, 1964 by and between the parties to Civil Action No. 1025-59.

It has been my expectation that when you had in hand a like release from the Temple Hill Baptist Church to the District of Columbia Baptist Convention, John M. Firmin, S. Lewis Morgan, Jr., and Mr. Chandler Stith, we as attorneys would exchange the releases.

The release which was delivered by mail to my office on Saturday, March 21, was not consistent with the agreement of March 11, principally for the reasons which I outlined to you in our telephone conversation on March 23, and for that reason is not accepted by the District of Columbia Baptist Convention or Messrs. Firmin, Morgan and Stith.

Having heard nothing further from you since March 23, I am sending to you herewith the original and two copies of the release by the D. C. Convention, in order that you may have it in hand to deliver to your clients when a proper release by the Temple Hill Baptist Church is available for delivery to me.

The withdrawal of the Temple Hill Church from the Convention has been received.

Sincerely,

/s/ Alvin O. West

Enclosures

EXECUTIVE BOARD - APRIL 13, 1964

Mr. Alvin O. West, attorney for the Convention, reported that all litigation involving the Temple Hill Baptist Church and its pastor, and the Convention and its officers, has now been terminated. The case of Temple Hill Baptist Church vs. Lee M. Clarke, M. Chandler Stith, and the District of Columbia Baptist Convention, Civil Action No. 1843-60 in the U.S. District Court for the District of Columbia, was dismissed by the plaintiff when the case was called for trial on March 4. The Convention had then proceeded to trial on its counterclaim to recover the \$9,555. which it had contributed to Temple Hill Church over the years, but the counterclaim was dismissed by the Court on the ground that the contributions were unconditional when made, and completed gifts cannot be rescinded.

The case of William B. Adams v. John M. Firmin, S. Lewis Morgan, Jr., and M. Chandler Stith, Civil Action No. 1025-59 in the same Court, was dismissed on March 11, 1964 pursuant to a written agreement between the parties thereto. Messrs. Firmin, Morgan, and Stith, in carrying out their part of the agreement, have requested the Executive Committee to rescind and to expunge from its records the resolution adopted by it on March 12, 1959, which is the basis for this suit, and the Executive Committee has done so. The Executive Committee has also at their request approved a resolution to be submitted to a later meeting of this Board, and authorized a release by the Convention of all claims against William B. Adams and Temple Hill Church, to be exchanged for a similar release by Temple Hill Church of all claims

against the Convention and Messrs. Firmin, Morgan, and Stith.

* * * * *

June 2, 1964

Alvin O. West, Esquire
Suite 500
815 15th Street, N. W.
Washington, D. C. 20005

Re: Adams vs. Firmin, et al

Dear Mr. West:

Further reference is made to the above noted matter and especially to the agreement for settlement that was made by the parties. To date the agreement has not been executed by your clients.

One day last week I saw you in the Bar Association Library and you told me of the steps that had been taken to date toward accomplishing the terms of the agreement. I was preoccupied with another problem at the time, and find that I am not able to relate to my clients what you told me then. They are very anxious to have word of the progress, if any, toward concluding the matter, and I am, therefore, writing to ask that you fully advise me.

I note that on March 13, 1964 you wrote saying that a meeting of the Executive Committee was scheduled for March 17 and that it would at that time be asked to take certain steps in compliance with the agreement.

Very truly yours,

/s/ John A. Shorter, Jr.

JAS:vcb

ALVIN O. WEST

Attorney at Law

815 Fifteenth Street, N.W., Suite 500

Washington, D. C. 20005

393-2155

June 4, 1964

John A. Shorter, Jr., Esq.

Mitchell, Ellis & Shorter

508 Fifth Street, N.W.

Washington, D. C.

Dear Mr. Shorter:

You say in your letter of June 2 that my clients have not executed the agreement of settlement. May I remind you that the agreement was executed by Messrs. Firmin and Stith on March 11 and immediately thereafter by S. Lewis Morgan, Jr., and two copies, completely executed, were enclosed with my letter of March 13 to you.

As for the matter of compliance with the terms of that agreement, your client has not yet delivered a release by the Temple Hill Baptist Church in accordance with the agreement, and you have never even replied to my letter of April 3 concerning this matter. I did receive by mail in an envelope bearing your name a release which does not comply with the agreement and is so phrased that it may itself be actionable. That so-called release is not signed by all five trustees of the Temple Hill Baptist Church

and does not bear the corporate seal.

I discussed these matters with you in our telephone conversation on March 23, and it was my understanding that you agreed to obtain from your client a release by the church in proper form and properly executed. On that understanding and for your convenience I sent you the release by the Convention with my letter of April 3, for you to deliver to your client when a proper release by the Temple Hill Baptist Church was available for delivery to me. Please send me immediately a proper release, or advise me definitely in writing that your client is unable or unwilling to obtain such a release, so that the status of this matter is not left to conjecture.

As I told you in our telephone conversation on March 23 and in our conversation in the Bar Association Library on May 27 (which resulted from a chance meeting after I had tried unsuccessfully to reach you by phone on May 25), the Executive Committee of the District of Columbia Baptist Convention, at the request of Messrs. Firmin, Morgan and Stith, has rescinded and expunged from its records the resolution of March 12, 1959 referred to in the agreement.

Further, I advised you, just as I had advised you during the negotiation of the agreement, that action by the District of Columbia Baptist Convention on the voluntary withdrawal from membership by Temple Hill Baptist Church and the rescinding of the Convention resolution of November 17, 1959 terminating the membership of Temple Hill Baptist Church cannot take place until the next annual session of the Convention in November 1964.

I also advised you that, as a preliminary to Convention action, these matters have been acted on favorably by the Convention Executive Committee, and it was planned to submit them also to the Executive Board.

However, my further recommendations to my clients will depend on the nature of your reply to this letter and to my letter of April 3.

Very truly yours,

/s/ Alvin O. West
Alvin O. West

* * * * *

ALVIN O. WEST

Attorney at Law

815 Fifteenth Street, N.W., Suite 500

Washington, D. C. 20005

393-2155

June 30, 1964

John A. Shorter, Jr., Esq.

Mitchell, Ellis & Shorter

508 Fifth Street, N.W.

Washington, D.C. 20001

Dear Mr. Shorter:

The purpose of this letter is to remind you that you have not replied to my letters of April 3, 1964 and June 4, 1964.

As I advised you in my letter of June 4, my further recommendations to my clients will depend on the nature of your reply to those letters.

Very truly yours,

/s/ Alvin O. West

* * * * *

Law Offices

MITCHELL, ELLIS & SHORTER

508 Fifth Street, N. W.

Curtis P. Mitchell
Roy M. Ellis
John A. Shorter, Jr.

Washington 1, D. C.

July 21, 1964

Metropolitan 8-3087
Metropolitan 8-4040

William A. Smith
Gordon J. Myatt

Alvin O. West, Esquire

815 Fifteenth Street, N. W.

Washington, D. C.

C Dear Mr. West:

O In further reference to the matter that we are concerned with involving my
P clients, Reverend William B. Adams, and the Temple Hill Baptist Church
Y and the District of Columbia Baptist Convention and the individuals that you
represent, and especially in reply to your letter of June 4, 1964, please be
advised that I have drafted a form of release that is to be properly executed
by my clients. This release is simple and concise.

I call upon you to send me demonstrative proof that the Executive Committee

of the District of Columbia Baptist Convention has rescinded and expunged from its records the resolution of March 12, 1959, and also proof of the action of the Executive Board as referred to in your letter of March 15, 1964. When the release has been duly executed and returned to me from my clients, I shall be in further communication with you.

Very truly yours,

/s/ John A. Shorter, Jr.

JAS:cb

* * * * *

ALVIN O. WEST

Attorney at Law

815 Fifteenth Street, N.W., Suite 500

Washington, D. C. 20005

393-2155

July 23, 1964

John A. Shorter, Jr., Esq.

Mitchell, Ellis & Shorter

508 Fifth Street, N.W.

Washington 1, D. C.

Dear Mr. Shorter:

I have your letter of July 21, replying to my letters of June 4 and April 3, 1964. Frankly, your letter cannot be considered a satisfactory reply to my earlier communications, since it indicates that

your client has not yet obtained from the Temple Hill Baptist Church a properly-drawn and properly-executed release of claims in accordance with the agreement of March 11, 1964. It is encouraging to learn that you have drafted a simple and concise form of release and that you will be in further communication with me when it has been properly executed. I am awaiting receipt of that release before deciding on further recommendations to my clients.

The Executive Board has been advised of the agreement of March 11, 1964, but as yet nothing in connection with that agreement has been presented to the Executive Board for action. As for action taken by the Executive Committee, I shall be glad to arrange for you and your client to examine the pertinent minutes of the Executive Committee at any convenient time.

Very truly yours,

/s/ Alvin O. West
Alvin O. West

* * * * *

October 8, 1964

Alvin O. West, Esquire

815 Fifteenth Street, N. W.

Washington, D. C. 20005

Dear Mr. West:

Some while ago, since the parties in the case of Adams v. Fermin signed their agreement, Rev. Adams has complained to me that implementation

has not progressed satisfactorily. He has reviewed the correspondence that you and I have had during the period, thus, as far as I have been able to, I have kept him abreast of the developments since the agreement was signed.

Recently, I asked Reverend Adams to prepare a statement of his complaints, particularizing the things that he felt needed to be done or which were improperly done. In response to my request he has prepared two such statements, one dated September 11 (3 pages long) and a one page statement of September 16, 1964. I do not feel that I can articulate these complaints for Rev. Adams, and it was my thought that the most direct way to acquaint you with what is on his mind was to pass his statements along to you in the original and actual form. By so doing, nothing will be lost in transmittal. Full performance of the agreement has not yet been had, to the extent that things remain to be done. I am disappointed. The matter seems to be a simple one, and I am perplexed as to why there are any problems. I know that the Executive Board of the Convention will be meeting soon and also the Executive Committee and later so will the Convention. It had been my hope that the matter would have been at an end long before now and that ratification of the agreement would be done in these forth coming sessions. It is our feeling that it is still not yet beyond possibility. If we will all lend our efforts and energies to doing so, we might be able to freely and profitably turn our attention to other things instead of letting this matter drag on.

May I hear from you at your earliest convenience.

Very truly yours,

/s/ John A. Shorter, Jr.

JAS:vcb

* * * * *

9400 Wisconsin Avenue

Bethesda, Maryland

September 11, 1964

John A. Shorter, Esq.

508 - 5th St., N.W.

Washington, D. C.

Dear Mr. Shorter:

It is six months today since the agreement that was reached between the defendants, M. Chandler Stith, S. Lewis Morgan, John Firman, and myself in Case 1025-59 was signed. The defendants have not in any way complied with the agreement. It is very evident that they did not bargain in good faith, and that we can charge them with default and accuse them of contempt of court.

They stand in default and contempt because:

1. Attorney West for the defense states in his letter of March 13th to you that he was undecided whether to present the agreement of March 11th for action by the Executive Board of the D.C. Baptist Convention at

its regular meetings which fell on the second Monday of April and of June, or to present same at a later meeting. This is an unnecessary and unwarranted delay without the consent of the court or the approval of the plaintiff. It is, however, a direct admission that it is necessary to present the agreement to the Board as a necessity for the compliance thereof.

2. The delay above referred to was the decision of attorney West and was peremptorily given to you as attorney for the plaintiff in a move to take it and like it, or else!
3. The letter of March 13th is an open defiance to the agreement by the court and in defiance of the rights of the plaintiff per se under the agreement.
4. Attorney West was twelve days in default in notifying you as my attorney of any release per paragraph 4, page 3, of the agreement of March 11th, which release as given by him is unacceptable.
5. The attorney for the defense has informed you in his letter of March 13th that a meeting of the Executive Committee would be held on March 17th in accordance with paragraph 2, page 1 of the agreement. He has violated the essence of good faith by omitting in his letter to you of April 2nd any reference to the action,

if any, which he said would be taken by the Executive Committee on March 17th.

6. The release signed by Mr. Fred Rhodes as President of the D.C. Baptist Convention totally violates the agreement of paragraph 4, page 3. Such a release specifically must come from the Convention and not any official thereof. The constitution and by-laws of the D.C. Baptist Convention do not in any way provide for either the Executive Committee or the President of the Convention or both to act in such matters. If attorney West seeks to argue otherwise I have the answer which devastates his argument.
7. The letter of July 29 from the defense admits that he bargained in bad faith because he should have to the release by official action of the Convention, which action he could have got on two occasions of regular meetings of the Executive Board in April and June. This he did not do although he presented the fact of the agreement on March 11th to them. Good faith demanded that he should expedite the action of all committees and Boards.
8. Attorney West bargained in bad faith inasmuch as preliminary action by the Executive Board is essential before the annual meeting of the Convention in November

in order to comply with Baptist procedure by which all Baptist Conventions are conducted.

9. A called meeting of the Executive Board could have been held to abide by the agreement at any time up to this date in order to show good faith, if any, in correcting the default.
10. Attorney West is not only in default and open to citation for contempt but is irresponsibly in defiance, in his refusal to comply with the agreement.
11. If the attorney or any one of the defense had authority to give a release they also would have had authority to comply with the rest of the agreement. The blatant defiance of the first part of the agreement is matched by his blatant presentation of an unauthorized release. The authority he claims in one instance he denies in the other.
12. Inasmuch as attorney West commits the Convention, as did also the three defendants, in paragraph 4 to official action it would be possible and easier to commit, and to get and give the action of the Executive Committee.
13. Attorney West acting for the defendants has violated the agreement of March 11th by not getting, or refusing to get, the retraction and expunction of both the Executive Board and the Convention. It is absolutely essential and

mandatory to get the retraction and expunction of both the Board and the Convention in addition to such action by the Executive Committee. This is obligatory because through attorney West the Executive Committee and the defendants asked and got blanket approval of both the Board and the Convention in its libelous attack on the plaintiff. The libelous resolution was not read to either the Board or the Convention but was referred to as the cause of our complaint in a furtive attempt to belittle and scandalize the plaintiff. The expunction of the Executive Committee is not complete, and likewise the retraction without the similar action of the Board in both instances.

14. Attorney West gave the release of Mr. Rhodes knowing full well that such a release would not be acceptable to anyone who understands Baptist polity.
15. Mr. West has knowingly and deliberately kept the knowledge of the action, if any, of the Executive Committee from the plaintiff.
16. In paragraph 3 of his letter of April 2nd he falsely states that the release given by the Temple Hill Baptist Church was not consistent with the agreement.
17. In paragraph 3 of this letter of April 2nd he falsely states

that the release given by our church was not acceptable by the defendants and the Convention. He could only know the acceptance or rejection of the Convention if he presented the agreement to them for action which he says he did not do.

18. The release given by Mr. Rhodes is not consistent with the agreement in content and purpose.
19. The release signed by Mr. Rhodes falsely states that The D. C. Baptist Convention "has caused this release to be signed by Fred B. Rhodes, Jr., its President". The release was never presented to the Convention for its authorization or approval.
20. The delays and the failures of the defense and the defense attorney for a period of six months are by themselves sufficient grounds to charge them with default and contempt of court.

Very sincerely yours,

/s/ Dr. William B. Adams
Dr. William B. Adams

9400 Wisconsin Avenue

Bethesda, Maryland

September 16, 1964

John A. Shorter, Esq.

508 - 5th St. N.W.

Washington, D. C.

Dear Mr. Shorter:

In response to your request and in further elucidation of my letter of September 11th I am including the following information to show that Alvin O. West and the defendants have not provided us with a bona fide release as specified in the agreement of March 11th, 1964.

Two things are included in paragraph 6 of the letter dated September 11th: First, the release submitted came from Mr. Fred Rhodes. Paragraph 4 of the agreement of March 11th states "The District of Columbia Baptist Convention", and does not state any official representative of the Convention. The release must have its origin in and the authority of the D.C. Baptist Convention. This they have failed to do. Second, the release states that Mr. Rhodes is acting for the Convention which authority is not his, and if he had the authority it would still be unacceptable because Mr. West in no way shows that such authority was ever given and no authority could be officially given for that purpose. You and I have previously discussed the question of Mr. West demonstrating any authority for granting the release.

The libelous resolution of March 12, 1959 adopted by the Executive Committee was referred without being read to the Executive Board and the annual session of the Convention for their approval. It is absolutely necessary to have the retraction and the expunction of both the Executive Board and the Convention of the resolution if in good faith they conform to paragraph 2, especially the first sentence, of the agreement of March 11th.

The defense attorney having failed to get action of the Executive Board in April or June, and being knowingly in default should have called a special meeting of the Executive Board to take action in the name of good faith. This explains paragraph 4 of the letter of September 11, 1964.

Very sincerely yours,

/s/ Dr. William B. Adams
Dr. William B. Adams

* * * * *

ALVIN O. WEST
Attorney at Law

815 Fifteenth Street, N.W., Suite 500
Washington, D. C. 2005

393-2155

October 9, 1964

John A. Shorter, Jr., Esq.

508 Fifth Street, N.W.

Washington 1, D.C.

Dear Mr. Shorter:

In my letter of June 4, 1964 I pointed out why the so-called release tendered by the Temple Hill Baptist Church was not acceptable. In your letter of July 21, 1964 you advised that you had drafted a simple and concise form of release which was to be properly executed by your clients, and you gave assurance that you would be in further communication with me when that release had been duly executed and returned to you.

Despite that assurance, your next communication, which is your letter of October 8, 1964, did not enclose that release and indeed made no mention of it. I believe I am entitled to an explanation from you as to what you propose to do about this matter, in line with the third paragraph of my letter of June 4.

You have no just ground to complain of disappointment that the agreement has not been fully performed by my clients. At the request of my clients, the Executive Committee has rescinded the resolution of March 12, 1959 and expunged that resolution from its records. The agreement requires nothing more than this with regard to the resolution of the Executive Committee. My clients will make every effort to effectuate the rescinding of the Convention resolution of November 17, 1959. You have always been aware that this could not be accomplished until the annual session of the Convention next month. This is the only action by my clients called for by the agreement which has not been performed, but we antici-

pate that it will be done when the Convention meets next month. The means by which my clients seek to accomplish this result are within their own discretion.

Although you write that you cannot articulate your client's complaints, I must ask you to at least interpret them. When you send me the proper release which your client is to obtain from the Temple Hill Baptist Church, please explain to me in a lawyer's language the respects in which you say my clients are in default.

Very truly yours,

/s/ Alvin O. West

* * * * *

MINUTES OF EXECUTIVE BOARD

October 12, 1964

Upon presentation of Recommendation Five, slight amendments were offered to the printed version, the new recommendation reading:

That during the period of this study a special committee of four persons, two members each from the D. C. and the Maryland Conventions, be appointed to coordinate the establishment of new mission work in the Washington metropolitan area.

Several Questions were raised; these were answered by Mr. Alvin West.

Upon proper motion, this recommendation was also approved.

Vice President Garrett then asked Mr. Alvin West, attorney for the Con-

vention, to give a report on the litigation involving the Temple Hill Baptist Church of Bethesda. Mr. West reviewed briefly the matters of record in this matter over the past few years, and stated that attorneys for both parties had agreed on a manner of settlement of the pending litigation, then presented a recommendation for action of the Board. His proposal is summarized as follows:

"In an agreement dated March 11, 1964 entered into by William B. Adams, John M. Firmin, S. Lewis Morgan, Jr., and M. Chandler Stith for the termination of Civil Action No. 1025-59 in the U.S.

District Court there was provision for the submission by the Temple Hill Baptist Church of its withdrawal from the Convention effective as of April 12, 1960, with the assurance that every effort would be made to effect the rescinding of the resolution adopted by the Convention on November 17, 1959 terminating the membership of that church in the Convention. The purpose of this proposed action is to let the record indicate a voluntary withdrawal from membership by the church rather than a dismissal by the Convention.

November 10, 1964

Alvin O. West, Esquire

Suite 500

815 15th Street, N. W.

Washington, D. C.

Dear Mr. West:

Reference is made to the last letter that you wrote me in our exchange of correspondence about the District of Columbia Baptist Convention and Dr. Adams and his church. Your letter was misplaced in our office and I was trying to find it before I wrote you again. It still remains missing and rather than let more time pass with your communication unanswered, I decided to write you this letter. As I previously pointed out, I think that the differences at this stage are not very severe, but a failure to resolve them is frustrating a long lasting and happy peace between the two factions. As I recall, you commented about the enclosures that were a part of my last letter that you could not make any sense out of what Dr. Adams said. This material was clear to me and I think you should have understood it also.

What seems to bother us most is that we have no any proof that your clients have performed their part of the agreement. Will you therefore send us evidence of what has been done by them to date. We would like to have proof in our hands without further delay.

Very truly yours,
/s/ John A. Shorter, Jr.

JAS:vcb

ALVIN O. WEST

Attorney at Law

815 Fifteenth Street, N.W., Suite 500

Washington, D. C. 20005

393-2155

December 29, 1964

John A. Shorter, Jr., Esq.

508 Fifth Street, N.W.

Washington 1, D.C.

Dear Mr. Shorter:

On November 16, 1964 the District of Columbia Baptist Convention, at a business session held during the course of its annual meeting, adopted a resolution accepting the withdrawal of the Temple Hill Baptist Church as a member of the Convention, said withdrawal being effective as of April 12, 1960, and a further resolution rescinding and cancelling the resolution adopted by it on November 17, 1959 terminating the membership of the Temple Hill Baptist Church in the Convention.

These resolutions were adopted by the District of Columbia Baptist Convention in response to the efforts of Messrs. Firmin, Morgan and Stith, an action on their part taken in accordance with the agreement of March 11, 1964. With this action taken, Messrs. Firmin, Morgan and Stith have now completed performance and complied fully with all obliga-

tions undertaken by them in the agreement of March 11, 1964, and the matter of their compliance with that agreement may be considered closed.

The furnishing of a proper release by the Temple Hill Baptist Church is the only portion of that agreement not yet complied with. You assured me in your letter of July 21, 1964 that such a release would be sent to me. I have not yet received it.

Very truly yours,

/s/ Alvin O. West
Alvin O. West

* * * * *

BOOK OF REPORTS

88th Annual Session

of the

DISTRICT OF COLUMBIA
BAPTIST CONVENTION

November 16-17, 1964

REPORT OF THE EXECUTIVE BOARD

LITIGATION

Since 1959 the records of the Convention reveal the details of litigation resulting from actions at law instituted by the Rev. William B. Adams and the Temple Hill Baptist Church of Bethesda. Of the five actions against the Convention and/or its officials, four have resulted in dismissals.

On March 11, 1964 the case of William B. Adams v. John M. Firmin, S. Lewis Morgan, Jr., and M. Chandler Stith, Civil Action No. 1025-59 in the U. S. District Court for the District of Columbia was dismissed pursuant to a written agreement between the parties thereto. Messrs. Firmin, Morgan, and Stith, in carrying out their part of the agreement, have requested the Executive Committee to rescind and expunge from its records the resolution adopted by it on March 12, 1959, which is the basis for this suit, and the Executive Committee has done so. Also at their request the Executive Committee approved a resolution to be submitted to the Executive Board. The formal resolution submitted to the Board at its October meeting was approved for submission to the Convention for action. Text of the resolution appears as Appendix No. 1 to this report. The Board recommends it to the Convention for adoption.

APPENDIX No. 1 TO

REPORT OF THE EXECUTIVE BOARD

In an agreement dated March 11, 1964 entered into by William B. Adams, John M. Firmin, S. Lewis Morgan, Jr., and M. Chandler Stith for the termination of Civil Action No. 1025-59 in the U. S. District Court there was provision for the submission by the Temple Hill Baptist Church of Bethesda of its withdrawal from the Convention effective as of April 12, 1960, with the assurance that every effort would be made to effect the rescinding of the resolution adopted by the Convention on November 17, 1959 terminating the membership of

that church in the Convention. The purpose of this proposed action is to let the record indicate a voluntary withdrawal from membership by the church rather than a dismissal by the Convention.

A letter dated March 15, 1964 from Temple Hill Baptist Church, 9400 Rockville Pike, Bethesda, Maryland, was read to the Executive Board at its October, 1964 meeting, by which that church submitted its withdrawal as a member of the Convention, effective April 12, 1960. The original of that letter is filed with the minutes of the Executive Board. On recommendation of its Executive Committee, the Executive Board at its October meeting recommended the following resolutions for adoption by the Convention at its November annual meeting:

RESOLVED, that the District of Columbia Baptist Convention hereby accepts the withdrawal of the Temple Hill Baptist Church as a member of said Convention, said withdrawal being effective as of April 12, 1960; and be it
FURTHER RESOLVED, that the District of Columbia Baptist Convention hereby rescinds and cancels the resolution adopted by it on November 17, 1959 terminating the membership of the Temple Hill Baptist Church in said Convention.

/s/ Clinton Hemmings, Secretary

DISTRICT OF COLUMBIA
BAPTIST CONVENTION

The Eighty-eighth Session

WASHINGTON, D. C.

1964

MONDAY EVENING, NOVEMBER 16

President Rhodes called the meeting to order at 7:30 p.m. He announced registration of delegates to that point as 425. Mrs. Dutton of the Baptist Book Store emphasized some qualities of four books available. Clinton Hemmings next offered the report of the Executive Board, BOR 2-10. He called attention to Appendix 2 which contains proposals for changes in Constitution and By-Laws. Action on the matters in Appendix 2 must wait for action on the Report of the Committee of Fifteen, hence must be deferred until the next day. He called attention to the several items of the basic report, especially to the joint efforts of the D. C. and Maryland Conventions concerning new mission locations. He moved that the two resolutions contained in Appendix No. 1 on the subject of litigation be adopted. Passage of the two resolutions would bring to a conclusion the litigation involving the Temple Hill Baptist Church of Bethesda which has been going on since 1959. The motion was seconded and carried; the resolutions were therefore adopted.

REPORT
OF
THE EXECUTIVE BOARD
LITIGATION

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/s/ CLINTON HEMMINGS, Secretary

* * * * *

DISTRICT OF COLUMBIA

BAPTIST CONVENTION

The Eighty-seventh Session

WASHINGTON, D. C.

1963

CONSTITUTION AND BY-LAWS OF THE DISTRICT
OF COLUMBIA BAPTIST CONVENTION

CONSTITUTION

ARTICLE V -- The Executive Board and Executive Committee

An Executive Board and Executive Committee are hereby created,
whose organization and functions shall be set forth in the by-laws.

BY-LAWS

ARTICLE I -- Meetings

SEC. 1. The Convention shall begin its meeting annually on the 3rd
Monday in November.

ARTICLE V -- The Executive Board

SEC. 2. The Executive Board shall have all the powers of the Convention as set forth in the Constitution and By-Laws ad interim; shall fill all vacancies as they occur, shall transact all business necessary to the carrying forward of the work of the Convention and shall make an annual report to the Convention, detailing its work during the year that is closed and presenting recommendations as to future programs and policies.

SEC. 3. The Executive Board shall meet for the purpose of electing an Executive Committee at the close of the last evening session of the annual convention meeting, and thereafter on the second Monday in January, April, June and October, and at such other times as the Executive Board of the President may deem it necessary, provided that for such special meetings the Secretary shall send notice thereof to each member at least five days in advance of the proposed meeting.

ARTICLE VI -- Executive Committee

SEC 2. The Executive Committee shall have direction of the business of the Convention arising between meetings of the Executive Board and such other matters as are referred to it by either the Convention or the Executive Board.

SEC. 4. The Executive Committee shall meet at the call of the Chairman; provided, however, that the members shall be notified by mail at least three days in advance of the meeting.

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(2)

BRIEF FOR APPELLEES

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,184

WILLIAM B. ADAMS,

Appellant,

v.

JOHN M. FIRMIN, et al.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

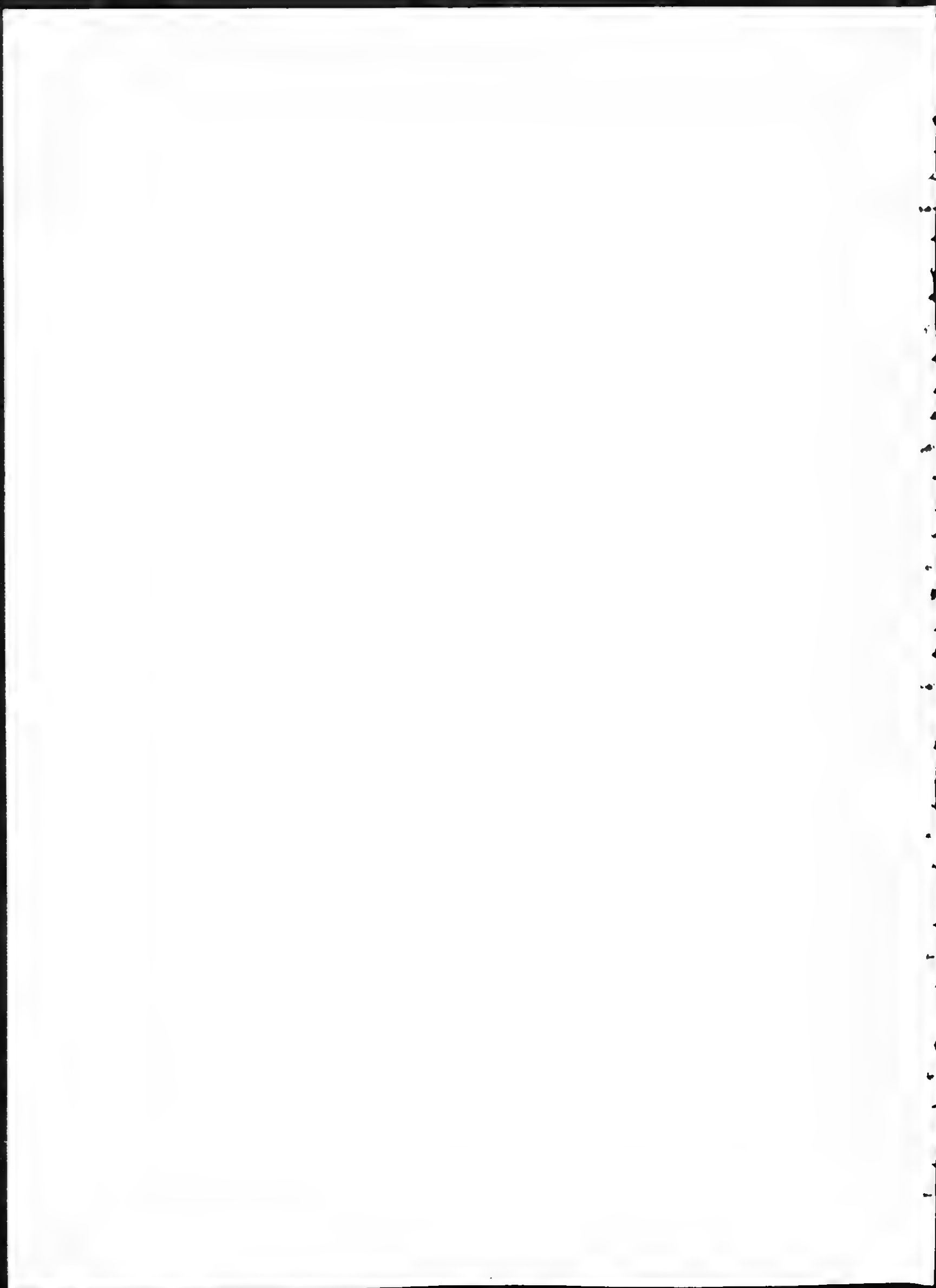
United States Court of Appeals
for the District of Columbia Circuit

FILED NOV 4 1966

Nathan J. Paulson
CLERK

ALVIN O. WEST
815 - 15th Street, N. W., Suite 500
Washington, D. C. 20005

Attorney for Appellees



(i)

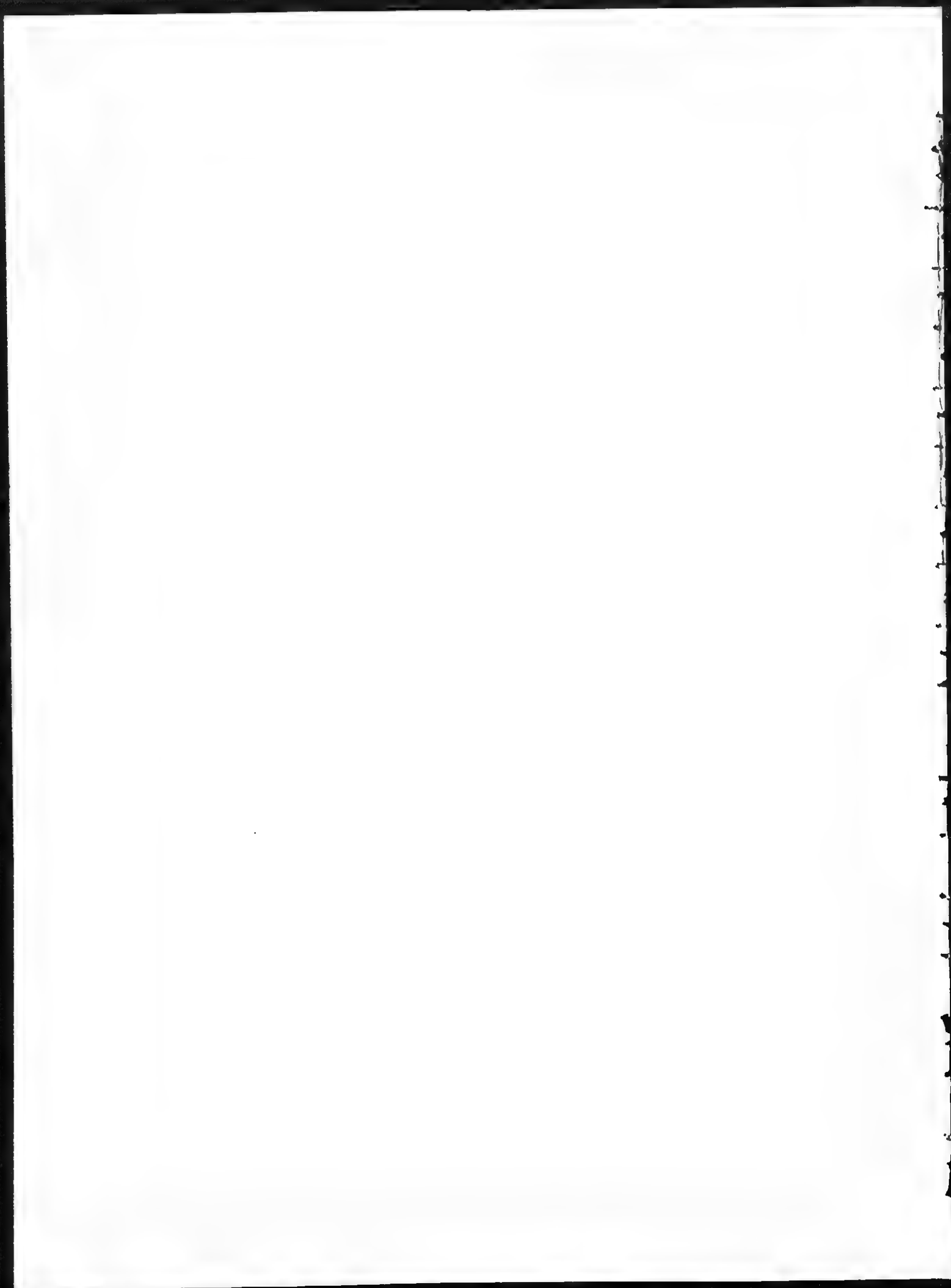
COUNTER-STATEMENT OF QUESTIONS PRESENTED

In the opinion of appellees, the questions are:

1. Where a plaintiff in a libel action moved to vacate a voluntary dismissal and restore the cause to the trial calendar because of defendants' alleged failure to perform in good faith the terms of the agreement of settlement, and said motion was set down for hearing on oral testimony, in preparation for which the Motions Judge reviewed the entire file, including depositions, covering a period of about six years, but at the hearing plaintiff proffered no oral testimony and limited his argument to the contention that defendants did not publish the agreement of settlement and the actions taken pursuant thereto, explaining the elimination from the agreement at his request of a long paragraph providing in detail for publication by saying he felt that the mechanics of carrying out other provisions of the agreement would provide complete publication, and the documentary evidence submitted by defendants showed that all steps by them contemplated by the agreement had been taken, whether the denial of the motion to vacate the voluntary dismissal was error.

2. In the circumstances set forth in Question 1 above, where the documentary evidence establishes that plaintiff has not fully complied with the provisions of the agreement of settlement, whether the plaintiff has standing to invoke the equity powers of the court to set aside a voluntary dismissal based on that agreement because of defendants' alleged non-compliance with its terms?

3. Where, in the circumstances set forth in Question 1 above, plaintiff waited more than one year and four months before moving to vacate the voluntary dismissal, permitted that motion to be dismissed for lack of prosecution, then a year and seven months after the voluntary dismissal filed a second motion to vacate, giving no explanation for the long delay, whether this motion was timely under the provisions of Rule 60(b), Federal Rules of Civil Procedure?



(iii)

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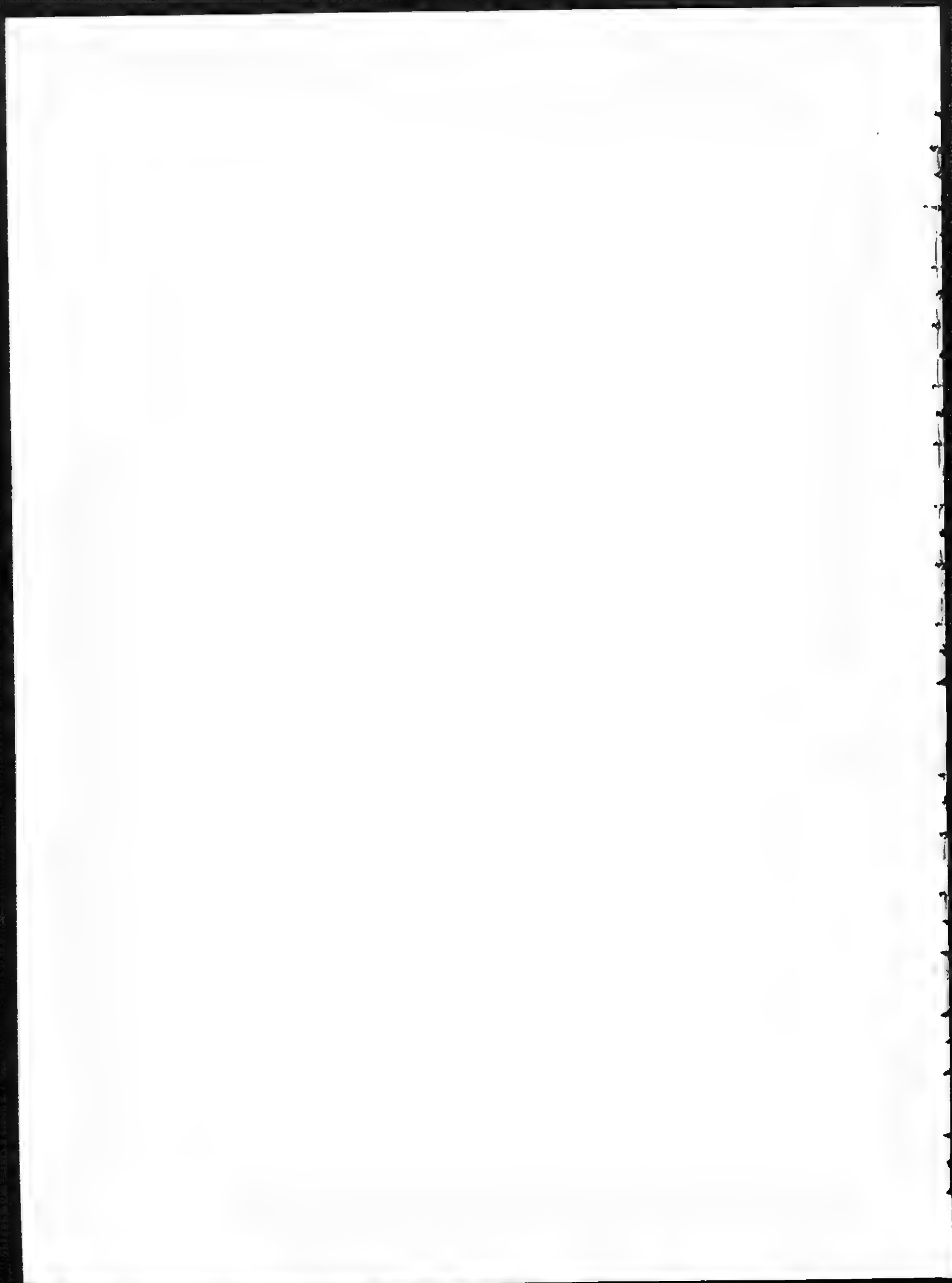
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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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WILLIAM B. ADAMS,

Appellant,

v.

JOHN M. FIRMIN, et al.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEES

COUNTER-STATEMENT OF THE CASE

Appellant William B. Adams, pastor of the Temple Hill Baptist Church, Bethesda, Maryland, filed this libel action on April 9, 1959, against appellees, the President,¹ Vice President and Executive Secre-

¹ Appellees S. Lewis Morgan, Jr., and John M. Firmin were President and Vice President respectively of the District of Columbia Baptist Convention in April 1959, but their terms ended in November 1959 and they no longer hold these offices (JA 11).

tary of the District of Columbia Baptist Convention (JA 1; cf. JA 4). The gravamen of the complaint was that a resolution of the Executive Committee of the District of Columbia Baptist Convention rejecting an unfounded claim for \$7,500 by Temple Hill Church against the Convention meant that appellant was guilty of making false, fictitious and fraudulent claims for money not due the Church, and also that the resolution libeled appellant by referring to him as "Mr. Adams" instead of "Dr. Adams" (JA 4-5). ^{1a}

This action was soon followed by other libel actions based on the same resolution (JA 17-18):

William B. Adams v. Alvin O. West, Civil Action No. 3201-59 in the Court below, dismissed for failure to state a claim, March 31, 1960, dismissal affirmed October 3, 1960, No. 15,826 in this Court, petition for rehearing denied, November 30, 1960, petition for certiorari denied by the Supreme Court of the United States on March 20, 1961, No. 768, October Term 1960;

Trustees of Temple Hill Baptist Church v. Frank K. Brasington, et al., Civil Action No. 3333-59 in the court below, dismissed for failure to state a claim, March 31, 1960, dismissal affirmed November 2, 1960, No. 15,767 in this Court;

Trustees of Temple Hill Baptist Church v. Frank Brasington, et al., Law No. 9676 in the Circuit Court for Montgomery County, Maryland, dismissed July 8, 1963.

^{1a} This citation to the printed Joint Appendix is incomplete because appellant failed to print all portions of the record which he himself designated. Although he included in his designation "The Complaint as amended and Answer," he printed only his Second Amended Complaint and not the Complaint itself, despite the fact that paragraphs 1 through 10 of the Complaint are realleged by reference in the Second Amended Complaint (JA 4). It is in paragraph 10 of his Complaint that appellant alleged that the use of the term "Mister" before his name was a deliberate attempt to further disgrace him.

In addition, pressed by the argument made in a motion to dismiss the appeal filed on June 2, 1960, in No. 15,767 in this Court, *supra*, that the clearest indication of the frivolousness of the entire action was the fact that the Temple Hill Baptist Church, without ever suing on its money claim, nevertheless was seeking to collect damages for libel because that claim had been rejected as unfounded, appellant, in his capacity as a trustee of Temple Hill Church, on June 16, 1960, filed an action on the money claim, *Temple Hill Baptist Church v. Lee M. Clarke, et al.*, Civil Action No. 1843-60 in the Court below (JA 18). That action was dismissed on March 4, 1964, for failure to prosecute when it was called for trial (JA 18; SJA 28).^{1b}

By persistent delaying tactics, involving a resistance to disclosure of information on discovery and a radical change of the basis for the complaint injected into the case at the pretrial hearing in December, 1960 (SJA-Docket entries), appellant extended the pendency of this case so that it was not called for trial until March 11, 1964.

On that day appellees, without pressing their additional defenses that the decisions in the companion actions established as a matter of law that the resolution of which appellant complained was not libelous (JA 13-14), agreed to continue to discuss an amicable disposition of the case. This discussion continued throughout the day. Late in the afternoon agreement was reached on a draft, and it was typed in final form (SJA 9-11). The actions agreed to be taken were as follows (JA 15-17):

Pars. 1 & 2, in part: The Temple Hill Baptist Church was to tender its withdrawal as a member of the Convention effective as of April 12, 1960, and appellees were to make a good faith

^{1b} Pursuant to this Court's order filed October 6, 1966, appellant printed and filed a Supplemental Joint Appendix, citations to which are indicated in this brief by the initials "SJA" to distinguish them from citations to the Joint Appendix, "JA."

effort to have the Convention rescind the resolution terminating the Church's membership as of that date (that resolution having been adopted by the Convention on November 17, 1959 during its annual session for that year).

Par. 2, in part: Appellees were to make a good faith effort to have the Executive Committee rescind and expunge from its records the resolution of March 12, 1959, which is the basis for this action.

Par. 2, in part: The parties were to join in executing a praecipe dismissing this action with prejudice and without costs to either party.

Par. 3: The agreement was to be published as soon as possible in the "Capital Baptist" (a Convention publication) in an issue to be given full circulation, the agreement to be printed in full, without any underlining, etc.; any comment or editorializing regarding the disposition of the case was to be made only upon concurrence and agreement of the attorneys of record of both parties as to the language of the comment or editorial; the Church and the Convention were to have the right to purchase from the printer and use as many copies of this issue of the "Capital Baptist" as they wished; and neither party should reprint the agreement or cause it to be reprinted, either in whole or in part.

Par. 4: The parties mutually released all claims and agreed to obtain within 10 days similar releases from the Church and the Convention.

After the agreement in the form agreed upon had been typed, and in the last minutes before it was signed, appellant's attorney asked appellees' attorney if he would agree to strike out Paragraph 3 providing for publication of the agreement in the "Capital Baptist" (SJA 9). Appellees'

attorney, making a quick decision, agreed to striking those provisions, on condition that a new Paragraph 3 be inserted providing "any reproduction or reprinting of this agreement shall be of the entire agreement" (SJA 9-11). On the insistence of appellees' attorney, the new Paragraph 3 was inserted by appellant's attorney in his own handwriting and initialed by appellant, so that there could never be the slightest question as to who had initiated this change and the participation of the appellant in it (SJA 9).

After the agreement, as modified, had been signed by those parties present, a praecipe dismissing the action with prejudice and without cost was executed and filed (SJA 1, 11). One of the appellees not being present at the time, appellees' attorney obtained his signature later and transmitted two copies of the agreement, completely executed, with his letter of March 13, 1964, to appellant's attorney (SJA 17).

In the same letter appellees' attorney advised that a meeting of the Executive Committee of the District of Columbia Baptist Convention had been called for March 17, 1964, at which the Committee would be asked to rescind and expunge from its records its resolution of March 12, 1959, and also to authorize the execution on behalf of the Convention of the general release of claims against appellant and Temple Hill Church as contemplated by Paragraph 4 of the agreement. This letter also stated that the proposed rescission of the Convention's resolution of November 17, 1959, would first be considered by the Executive Board,² so that it will go to the Convention as a recommendation of the Board; that there would be three meetings of the Board before the next annual session of

² The District of Columbia Baptist Convention meets annually on the 3rd Monday in November (By-Laws, Art. I, Sec. 1, SJA 56). The Executive Board has all the powers of the Convention *ad interim* (By-Laws, Art. V, Sec. 2, SJA 57). The Executive Committee has "direction of the business of the Convention arising between meetings of the Executive Board * * *" (By-Laws, Art. VI, Sec. 2, SJA 57).

the Convention, and no decision had been made as to when this matter would be taken up with the Board (SJA 17-18).

The Convention Executive Committee met on March 17, 1964³ and adopted the following resolutions (SJA 19-21):

RESOLVED, that in view of the agreement dated March 11, 1964 entered into by William B. Adams, John M. Firmin, S. Lewis Morgan, Jr., and M. Chandler Stith, and of the dismissal of Civil Action No. 1025-59 in the United States District Court for the District of Columbia, the Executive Committee hereby rescinds the resolution adopted by it on March 12, 1959 which is the basis of the aforesaid Civil Action No. 1025-59 and orders that said resolution be expunged from its records; and be it

FURTHER RESOLVED, that the President and Secretary of the District of Columbia Baptist Convention be and they hereby are authorized and directed to execute and deliver on behalf of and in the name of said Convention a general release of all claims, demands, causes of action, suits and the like which it now has against William B. Adams and the Temple Hill Baptist Church or either of them, said release to be delivered in exchange for a similar release from the Temple Hill Baptist Church to the Convention, John M. Firmin, S. Lewis Morgan, Jr., and M. Chandler Stith.

The written withdrawal of the Temple Hill Baptist Church from membership in the District of Columbia Baptist Convention was not then in hand, but the Executive Committee also adopted the following resolutions to be forwarded with the written withdrawal, when received, to the Executive Board, with a proposal that the Executive Board recommend

³ As the minutes show (SJA 19-20), this meeting was a continuation of a meeting held on March 7, 1964 to consider an earlier settlement proposal.

these resolutions for adoption by the next annual session of the Convention (SJA 21-22):

RESOLVED, that the District of Columbia Baptist Convention hereby accepts the withdrawal of the Temple Hill Baptist Church as a member of said Convention, said withdrawal being effective as of April 12, 1960; and be it

FURTHER RESOLVED, that the District of Columbia Baptist Convention hereby rescinds and cancels the resolution adopted by it on November 17, 1959 terminating the membership of the Temple Hill Baptist Church in said Convention.

Thereafter, a letter dated March 15, 1964 was received from the Temple Hill Baptist Church withdrawing as a member of the Convention, effective as of April 12, 1960 (SJA 18, 19). On March 19, 1964 the President and Secretary of the Convention executed on behalf of the Convention a release to Temple Hill Baptist Church and William B. Adams from all claims, demands, causes of action, suits and the like, which it then had or then claimed to have (SJA 14). Pursuant to the action of the Executive Committee, the two sheets containing the resolution of March 12, 1959 were cut from the Committee minutes (SJA 23).

On Saturday, March 21, 1964 appellees' attorney received in the mail a form of release (SJA 24-26) purporting to have been executed on behalf of Temple Hill Baptist Church containing a long preamble reciting an understanding of the agreement which included the provisions in the original Paragraph 3 for publication of the agreement in the Capital Baptist, and ending with this paragraph (SJA 25-26):

For good and valuable consideration, The Temple Hill Baptist Church, a corporation, by the action of its Trustees, March 15, 1964, hereby releases, foregoes, waives and relinquishes any and all demands, claims, rights of suit, and causes of action, *excepting if there*

be anything of a criminal nature, that it may now have against John M. Firman [sic], S. Lewis Morgan, Jr. and M. Chandler Stith and the District of Columbia Baptist Convention. [Emphasis supplied.]

On Monday, March 23, 1964 appellees' attorney telephoned appellant's attorney and advised that the release by the Convention was in hand ready for delivery in exchange for a proper release by the Church (SJA 26-27). He further advised that the form of release by the Church received in the mail was rejected as not being in accordance with the agreement (SJA 27). It was the understanding of appellees' attorney that appellant's attorney agreed in that conversation to obtain from appellant a release by the Church in proper form and properly executed (SJA 31). In addition, appellant's attorney was told of the March 17 action of the Executive Committee rescinding the resolution and expunging it from the records, and he was told again, just as he had been told during the negotiation of the agreement, that action by the District of Columbia Baptist Convention on the voluntary withdrawal from membership by Temple Hill Church and the rescinding of the Convention resolution of November 17, 1959 terminating the Church's membership could not take place until the next annual session of the Convention in November 1964 (SJA 31-32).

Nothing was heard from appellant's attorney following this conversation, and on April 3, 1964 appellees' attorney wrote reminding him of this conversation and enclosing executed copies of the release by the Convention so that he might have them in hand to deliver to his client when a proper release by the Church was available for delivery (SJA 26-27).

Still there was no reply from appellant's attorney. On April 13, 1964 appellees' attorney reported to the Executive Board of the District of Columbia Baptist Convention on the events up to that date (SJA 28-29). On May 25, 1964 he tried without success to reach appellees' attorney by telephone, and the call was not returned (SJA 31). On May 27, 1964,

at a chance meeting in the Bar Association Library, appellees' attorney repeated to appellant's attorney the substance of what had been said in the telephone conversation on March 23 (SJA 31). A proper release from the Church still had not been delivered, and no explanation of the failure to do so was offered.

On June 2, 1964 appellant's attorney wrote a letter to appellees' attorney stating that "To date the agreement has not been executed by your clients" (SJA 29). In this letter he made no reference to the telephone conversation on March 23 or to the letter of April 3 from appellees' attorney—he just asked that he be fully advised as to the progress, if any, toward concluding the matter (SJA 29).

Appellant's attorney replied on June 4, 1964 reviewing the conversations on March 23 and May 27, pointing out that no reply to the letter of April 3 had been received, and calling for such a reply (SJA 30-32). No reply was forthcoming, and on June 30, 1964 appellees' attorney wrote again to remind appellant's attorney that he had not replied to the letters of April 3 and June 4, 1964 (SJA 32-33).

Appellant's attorney did not reply until July 21, 1964, when he wrote requesting "demonstrative proof" of actions by the Convention Executive Committee and Executive Board and stating (SJA 33-34):

In further reference to the matter that we are concerned with involving my clients, Reverend William B. Adams, and the Temple Hill Baptist Church and the District of Columbia Baptist Convention and the individuals that you represent, and especially in reply to your letter of June 4, 1964, please be advised that I have drafted a form of release that is to be properly executed by my clients. This release is simple and concise.

I call upon you to send me demonstrative proof that the Executive Committee of the District of Columbia Baptist Convention has rescinded and expunged from its records the resolution of March 12, 1959, and also proof

of the action of the Executive Board as referred to in your letter of March 15, 1964.

When the release has been duly executed and returned to me from my clients, I shall be in further communication with you.

Appellees' attorney replied on July 23, 1964, stating that he was awaiting receipt of the release before deciding on further recommendations to his clients and concluding (SJA 34-35):

The Executive Board has been advised of the agreement of March 11, 1964, but as yet nothing in connection with that agreement has been presented to the Executive Board for action. As for action taken by the Executive Committee, I shall be glad to arrange for you and your client to examine the pertinent minutes of the Executive Committee at any convenient time.

The next communication from appellant's attorney was dated October 8, 1964 (SJA 35-37). He made no reference to the release which had been promised in the letter of July 21 but stated that appellant had complained to him that implementation of the agreement was not progressing satisfactorily, and he enclosed a three-page letter and a one-page letter written by appellant stating his complaints (SJA 36, 37-44). The three-page enclosure listed 20 alleged reasons why appellees "stand in default and contempt"; the one-page enclosure was a "further elucidation" written by appellant at his attorney's request (SJA 37-44). None of appellant's complaints is understandable in terms of the agreement.⁴ Although appellant's attorney admitted in his letter that he was forwarding appellant's statements in their original form because "I do not feel that I can articulate these complaints for Rev. Adams," nevertheless, for some

⁴ Because of the length and obscurity of appellant's statements of complaints, no effort is made to summarize them here.

reason which he did not state, he felt justified in adding that "The matter seems to be a simple one * * *" (SJA 36).

The reply from appellees' attorney, dated October 9, 1964, pointed out that the October 8 letter made no mention of the release promised in the letter of July 21, and concluded (SJA 45-46):

You have no just ground to complain of disappointment that the agreement has not been fully performed by my clients. At the request of my clients, the Executive Committee has rescinded the resolution of March 12, 1959 and expunged that resolution from its records. The agreement requires nothing more than this with regard to the resolution of the Executive Committee. My clients will make every effort to effectuate the rescinding of the Convention resolution of November 17, 1959. You have always been aware that this could not be accomplished until the annual session of the Convention next month. This is the only action by my clients called for by the agreement which has not been performed, but we anticipate that it will be done when the Convention meets next month. The means by which my clients seek to accomplish this result are within their own discretion.

Although you write that you cannot articulate your client's complaints, I must ask you to at least interpret them. When you send me the proper release which your client is to obtain from the Temple Hill Baptist Church, please explain to me in a lawyer's language the respects in which you say my clients are in default.

The Convention Executive Board, at its regular meeting on October 12, 1964, voted to recommend for adoption by the annual session of the Convention the resolutions relating to the termination of Temple Hill Church's membership in the Convention (SJA 46-47; see *supra*, p. 7).

On November 10, 1964 appellant's attorney, again making no reference to appellant's failure to furnish a proper release by the Temple

Hill Church, wrote a letter stating that appellant's complaints were clear to him and he thought appellees' attorney should have understood them also (SJA 48). He concluded with a demand that he be furnished without delay with proof of what appellees had done to date (SJA 48).

The annual session of the District of Columbia Baptist Convention was held November 16-17, 1964 (SJA 50). The Book of Reports, containing all reports being submitted to the annual session, included in the Report of the Executive Board the following Paragraphs (SJA 50-52):

LITIGATION

Since 1959 the records of the Convention reveal the details of litigation resulting from actions at law instituted by the Rev. William B. Adams and the Temple Hill Baptist Church of Bethesda. Of the five actions against the Convention and/or its officials, four have resulted in dismissals. On March 11, 1964 the case of *William B. Adams v. John M. Firmin, S. Lewis Morgan, Jr., and M. Chandler Stith*, Civil Action No. 1025-59 in the U. S. District Court for the District of Columbia, was dismissed pursuant to a written agreement between the parties thereto. Messrs. Firmin, Morgan, and Stith, in carrying out their part of the agreement, have requested the Executive Committee to rescind and expunge from its records the resolution adopted by it on March 12, 1959, which is the basis for this suit, and the Executive Committee has done so. Also at their request the Executive Committee approved a resolution to be submitted to the Executive Board. The formal resolution submitted to the Board at its October meeting was approved for submission to the Convention for action. Text of the resolution appears as Appendix No. 1 to this report. The Board recommends it to the Convention for adoption.

* * *

APPENDIX NO. 1 TO
REPORT OF THE EXECUTIVE BOARD

In an agreement dated March 11, 1964 entered into by William B. Adams, John M. Firmin, S. Lewis Morgan, Jr., and M. Chandler Stith for the termination of Civil Action No. 1025-59 in the U. S. District Court there was provision for the submission by the Temple Hill Baptist Church of Bethesda of its withdrawal from the Convention effective as of April 12, 1960, with the assurance that every effort would be made to effect the rescinding of the resolution adopted by the Convention on November 17, 1959 terminating the membership of that church in the Convention. The purpose of this proposed action is to let the record indicate a voluntary withdrawal from membership by the church rather than a dismissal by the Convention.

A letter dated March 15, 1964 from Temple Hill Baptist Church, 9400 Rockville Pike, Bethesda, Maryland, was read to the Executive Board at its October, 1964 meeting, by which that church submitted its withdrawal as a member of the Convention, effective April 12, 1960. The original of that letter is filed with the minutes of the Executive Board. On recommendation of its Executive Committee, the Executive Board at its October meeting recommended the following resolutions for adoption by the Convention at its November annual meeting:

RESOLVED, that the District of Columbia Baptist Convention hereby accepts the withdrawal of the Temple Hill Baptist Church as a member of said Convention, said withdrawal being effective as of April 12, 1960; and be it

FURTHER RESOLVED, that the District of Columbia Baptist Convention hereby rescinds and cancels the resolution adopted by it on November 17, 1959 terminating the membership of the Temple Hill Baptist Church in said Convention.

This Report of the Executive Board was formally presented to the annual session of the Convention on November 16, 1964, which received the report and adopted the resolutions quoted above (SJA 53-56).

On December 29, 1964 appellees' attorney wrote to appellant's attorney as follows (SJA 49-50):

On November 16, 1964 the District of Columbia Baptist Convention, at a business session held during the course of its annual meeting, adopted a resolution accepting the withdrawal of the Temple Hill Baptist Church as a member of the Convention, said withdrawal being effective as of April 12, 1960, and a further resolution rescinding and cancelling the resolution adopted by it on November 17, 1959 terminating the membership of the Temple Hill Baptist Church in the Convention.

These resolutions were adopted by the District of Columbia Baptist Convention in response to the efforts of Messrs. Firmin, Morgan and Stith, an action on their part taken in accordance with the agreement of March 11, 1964. With this action taken, Messrs. Firmin, Morgan and Stith have now completed performance and complied fully with all obligations undertaken by them in the agreement of March 11, 1964, and the matter of their compliance with that agreement may be considered closed.

The furnishing of a proper release by the Temple Hill Baptist Church is the only portion of that agreement not yet complied with. You assured me in your letter of July 21, 1964 that such a release would be sent to me. I have not yet received it.

On July 23, 1965, almost seven months after this last communication from appellees and more than one year, four months after the voluntary dismissal, appellant filed a motion to set aside and vacate the praecipe of dismissal (SJA-Docket entries). When this motion was called for argument, appellant's attorney declined to proceed with argument, and the

motion was dismissed without prejudice (SJA-Docket entries). A second motion of appellant to set aside the voluntary dismissal was filed on October 11, 1965, more than nine months after the last communication from appellees and exactly one year and seven months after the dismissal (JA 22-23). The only complaints made in this motion related to the agreement of appellees to (JA 22-23):

* * * make every effort to effectuate the rescinding and cancellation of the resolution adopted by the Convention on November 17, 1959, terminating the membership of the Temple Hill Baptist Church in said Convention and to obtain within ten (10) days after March 11, 1964, a release from the District of Columbia Baptist Convention. * * *

Although appellant's points and authorities in support of this motion cited "The Agreement entered into by the parties" (JA 24), that agreement was not included in the record and appellant did not attach a copy of it as an exhibit to his motion. When this motion came on for hearing the argument for appellant left the court uncertain as to what the issues on the motion were, and in addition appellees' attorney challenged many of the assertions of fact made on behalf of appellant. For these reasons the court below on November 18, 1965 entered an order reciting that disposition of the "motion requires a clarification of the issues and the taking of oral testimony," ordering the hearing on the motion continued to December 16, 1965 for hearing on oral testimony in Motions Court No. 2 (Long Motions), and ordering the respective attorneys to serve and file a statement specifying the provisions of the agreement which it is alleged the opposing party or parties have not complied with, stating in what respects those things which were done by the opposing party or parties allegedly fell short of full compliance with the agreement (JA 24-25).

The statement filed by appellant alleged a failure to comply with the agreement in four respects (JA 25-28):

1. The individual defendants failed in good faith to make every effort to effectuate the rescission and cancellation of the resolution of March 12, 1959, of the Executive Committee of the District of Columbia Baptist Convention in the following respects:

a. The rescission and cancellation of the resolution of March 12, 1959, could only be effectuated by a vote of the entire Executive Committee. Such a vote was never taken and the membership of the Executive Committee was never informed as to the action being taken by the Committee, but the token compliance with this provision of the agreement was completed by a small group within the Committee, made up in part by the individual defendants.

b. The action of the Executive Committee in rescinding and cancelling the resolution of March 12, 1959, if there had been such an action, would then have to be presented to the Executive Board of the District of Columbia Baptist Convention for a vote and approval. This was never done.

c. Only after action of the Executive Board in either approving or disapproving the action of the Executive Committee, would the matter of rescission and cancellation and expunction be placed before the Convention. Thus, the Convention could not and has not acted upon this rescission and cancellation.

2. The individual defendants pledged in good faith to make every effort to effectuate the rescission and cancellation of the resolution adopted by the Convention on November 17, 1959, terminating the membership of the Temple Hill Baptist Church in the Convention. The question or motion with respect to the rescission and cancellation of that resolution was never read before the Convention; therefore, the Convention was never made aware of the action expected of it and therefore publication of the settlement of this action and its withdrawal

of the termination of the membership of this particular church, was never made to the members of the Convention.

3. Paragraph 2 further provides that the defendants would take appropriate steps to have the Executive Committee of the District of Columbia Baptist Convention expunge from its records the resolution of March 12, 1959. When that resolution was adopted by the Committee, it was then taken to the Board, which gave blind approval to it and, in turn, it was taken, then, to the Convention, which, in turn, gave blind approval to the resolution. In order to expunge from the records of the Committee, the resolution of March 12, 1959, that Committee will, in turn, have to take its expunction to the Board and, in turn, to the Convention for approval, since those bodies approved the action of the Committee contained in its records. This was never done.

4. Paragraph 4 of the agreement provides that within ten days of the date thereof, a release from the District of Columbia Baptist Convention would be provided to the plaintiff. Since the Convention can only act as a body, such a release would have to be the result of a motion on the floor and a vote thereon. This was never done and, therefore, a valid release from the Convention was never provided to the plaintiff. The spurious release that was provided was not provided within the ten days required.

The statement of appellees raised two issues: (1) whether appellant's motion was timely under the provisions of Rule 60(b), Federal Rules of Civil Procedure, and (2) whether appellant had obtained from the Church a release similar to the release in Paragraph 4 of the agreement, as provided in said Paragraph 4 (SJA 4-6). The purported release from the Church submitted by appellant was challenged on five grounds (SJA 5-6): (1) the 4th paragraph of the Church release, referring to publica-

tion of the agreement, is inconsistent with Paragraph 3 of the agreement (2) the concluding paragraph of the Church release libels appellees and the Convention by directly implying that they have committed acts of a criminal nature, which is a breach of Paragraph 4 of the agreement; (3) the Church release is not a "similar release" to that contained in Paragraph 4 of the agreement, as the former contains a long recital of extraneous and offensive matter; (4) the Church release is not properly executed, as it should be signed by all six of the Church's trustees (including appellant, who for some reason did not sign) and not by only one trustee; and (5) no assurance has ever been given by appellant that execution of the release was authorized by the Church congregation, as required by Baptist polity and the articles of incorporation of the Church. (See Church's articles of incorporation, SJA 16.)

When appellant's motion came on for hearing on December 16, 1965 pursuant to the above-mentioned order, appellant still had not submitted in support of his motion a copy of the agreement or of any of the other documentary evidence which would necessarily be considered in passing on the issues raised by appellant. The Motions Judge therefore continued the motion again, directing the parties to submit through the Clerk any documents which they wished to have considered.

Appellant's motion next came on for hearing on February 10, 1966 (SJA 7). Beginning with a preliminary statement by the court, the following colloquy between the court and appellant's attorney took place (SJA 7-8):

THE COURT: * * * But this controversy was settled. I think it should remain settled. Now, the differences between the parties can obviously be resolved by men of good will. And the Court will assume that both litigants are men of good will.

Now what do you have to say to the contrary?

MR. HUNTSMAN: Your Honor, I don't know that the

assumption is unfounded. However, to this point, the good will of the defendants has not been demonstrated toward the plaintiff.

THE COURT: The file doesn't reflect that, Mr. Huntsman. I read this file until 11:30 last night. I read these depositions which go on and on with technical objections by your clients, or your predecessors as counsel.

Now let's be practical about this thing. Much too much time has already gone into these papers. I think that you gentlemen can resolve these slight differences that remain.

MR. HUNTSMAN: Your Honor, our contention is very simple, and our complaint is very simple, that we are before you on today. Our complaint is simple. I don't know that the resolution of it is simple. Our complaint is that the defendants did not publish this agreement and their rescission of this libel as contemplated by all parties at the time this agreement was reached.

THE COURT: Is that all?

MR. HUNTSMAN: That is our contention.

THE COURT: I will hear from Mr. West on it.

Thereafter appellees' attorney made his argument, pointing out that the original Paragraph 3 of the agreement, which had provided at length and in detail for the publication of the agreement, had been stricken from the agreement at appellant's request, and a new Paragraph 3 substituted providing only that "Any reproduction or reprinting of this agreement shall be of the entire agreement" (SJA 8-10). Appellees' attorney argued further that this new provision did not obligate appellees to make any publication of the agreement; that Paragraph 5, listing all of the suits growing out of this matter and showing the disposition of them, had been added to the agreement because of the publication requirement of the

original Paragraph 3; and that full publication was made of the actions required of appellees under the Agreement, citing specifically the statement in the Book of Reports at the annual session of the Convention and the action of the Convention itself as reflected in the printed Annual (SJA 10-12).

The rebuttal argument of appellant's attorney was as follows (SJA 12-13):

MR. HUNTSMAN: Your Honor, I think that Mr. West is misconstruing, and perhaps the Court is, my term of publication. I don't mean to refer to the paragraph in that agreement that was stricken out. I am talking about the spreading of the word, as anticipated by Doctor Adams at the time this thing was settled, that their action—

THE COURT: What paragraph of the agreement are you referring to?

MR. HUNTSMAN: That their action had been rescinded. I am referring to all paragraphs of the agreement.

THE COURT: What specifically?

MR. HUNTSMAN: This agreement must be read in conjunction with the practices and the political makeup of this Convention, the board mentioned therein in that agreement and the committee mentioned in that agreement.

THE COURT: What is your explanation of the lining out of paragraph 3 and the substitution of this very brief note "Any reproduction or reprinting of this agreement shall be of the entire agreement"?

MR. HUNTSMAN: It was felt by Reverend Adams that if the rest of this agreement were kept, as he anticipated at the time it was made it would be kept by all parties, that particular paragraph would not be necessary because by the very mechanics of carrying forth

the other provisions in that agreement publication would be so complete that there would be no question in anyone's mind of the terms of this agreement and the fact that the libelous action had been rescinded and canceled.

THE COURT: Mr. Huntsman, there was specific provision in this agreement for the publication of the matter in a named journal, the Capital Baptist, and that was lined out and initialed.

MR. HUNTSMAN: No question about it.

THE COURT: I don't think your point is well taken. I am going to deny your motion.

The order denying appellant's motion was entered on February 21, 1966 (JA 28). Notice of appeal was filed on March 22, 1966, but the appeal bond and the transcript of the final hearing were not filed until after appellees had moved for an order requiring appellant to do so (SJA-Docket entries). Appellant obtained an extension to May 16, 1966 of his time for docketing the appeal in this Court (SJA-Docket entries). The appeal was docketed here on the last day of the extended time (SJA-Docket entries). Thereafter, appellant did nothing in furtherance of his appeal until after appellees had moved on June 30, 1966 to dismiss the appeal on the ground that appellant had not complied with the provisions of Rules 16(b) and 18(a) of the General Rules of this Court. Prodded by this motion, appellees moved for extensions of time. This Court, by its order of August 8, 1966, denied appellees' motion to dismiss, and, among other things, ordered appellant to file his statement as to the contents of the joint appendix within one week, his brief on or before August 15, 1966, and the printed joint appendix on or before the date on which appellant's reply brief, if any, is due to be filed.

Statements by both appellant and appellees as to the contents of the joint appendix were duly filed. Appellant's typewritten brief was duly filed, and on August 25, 1966, he filed a printed "Brief for Appellant and

Joint Appendix." On August 26, 1966 appellees moved to strike the joint appendix filed by appellant on the grounds that it did not comply with the requirements of Rule 16(a) of this Court, as appellant had failed to include therein any of the portions of the record heretofore designated by appellees for printing, and that appellant had not even printed therein all portions of the record as designated by him. After this brief was lodged with the Clerk in typewritten form, appellees' motion to strike the joint appendix was denied by this Court on October 6, 1966.

RULE INVOLVED

Rule 60(b), Federal Rules of Civil Procedure, provides:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. * * *

SUMMARY OF ARGUMENT

1. Although appellant contends that the court below did not grant a full and complete hearing and that it based its ruling on the court's personal opinion as to the general social value of this litigation rather than on the merits, the record shows affirmatively that the court had read the file until 11:30 p.m. on the night before the hearing; that at the hearing appellant's counsel voluntarily limited his argument to a single contention—that appellees had not published the agreement of settlement and their compliance with it in accordance with the provisions of the agreement; that the agreement shows on its face that a detailed provision requiring publication thereof, inserted at appellant's request, was at appellant's request stricken before the signing of the agreement and replaced by a provision which did not require publication; and that appellant's attorney was given full opportunity to explain his theory that despite this change the implementation of the entire agreement required publication. The record shows full compliance by appellees with the agreement, and appellant concedes in his brief that they have complied fully with its express provisions.

2. Appellant is not entitled to equitable relief on the basis of appellees' alleged failure to comply fully with the agreement, as appellant has failed to furnish a proper release from the Temple Hill Baptist Church as required by the agreement, even though his attorney on two occasions gave assurances that such a release would be furnished.

3. Appellant's motion to set aside a voluntary dismissal on the ground that appellees had not complied fully with the settlement agreement, which motion was filed one year and seven months after the dismissal, is out of time under the provisions of Rule 60(b), Federal Rules of Civil Procedure, in that it was not filed within one year of the dismissal, and in any event it was not filed within a reasonable time under the facts in this case, no explanation whatever for the long delay having been offered.

ARGUMENT

I.

The record discloses that the Motions Judge reviewed the entire file in preparation for the hearing on appellant's motion, that a full and fair hearing was given appellant on the one point to which he limited himself in his argument at the hearing, and that the evidence fully supports the denial of appellant's motion.

Appellant contends that the court below did not grant a full and complete hearing on his motion and abused its discretion by basing its ruling upon the court's personal opinion as to the general social value of the litigation in question rather than upon the merits of the motion. Included in this argument is the statement that "The Court took the position at the outset that it should not even be asked to hear such a case" (Brief, p. 6).

Appellant gives no record citation for this astounding statement, for the simple reason that nothing in the record supports it.

The record shows affirmatively that the court below had made a careful study of the entire case. When appellant's attorney made the assertion that "to this point, the good will of the defendants has not been demonstrated toward the plaintiff", the court replied (SJA 7-8):

The file doesn't reflect that, Mr. Huntsman. I read this file until 11:30 last night. I read these depositions which go on and on with technical objections by your clients, or your predecessors as counsel.

We feel confident that a judge sitting in Motions Court who studies the file in a given case until 11:30 p.m. on the night before the hearing on a motion has set a standard which a few may equal but none excel. Certainly such diligence leaves no room for a contention that the motion has not been considered on its merits.

The issues which appellant intended to raise by his motion were

variously stated at different times,⁵ but when the motion came on for final hearing appellant's attorney expressly and voluntarily limited the argument to one "very simple" contention: "Our complaint is that the defendants did not publish this agreement and their rescission of this libel as contemplated by all parties at the time this agreement was reached" (SJA 8).

On this issue the reply of appellees' attorney was that the original Paragraph 3, which provided in detail for the publication of the agreement, was first put into the agreement at appellant's insistence, and then at the last minute removed at his request, being replaced by a provision which imposed no obligation on anyone to publish the agreement (SJA 8-12). Thus the agreement shows on its face that appellant's argument is without foundation.

In rebuttal appellant's attorney could not cite to the court any specific provision of the agreement requiring publication of it by appellees (SJA 12-13). For his argument, he said, he was "* * * referring to all paragraphs of the agreement" (SJA 13). When pressed to explain the deletion of the original Paragraph 3 with its clear provisions for publication, he could only state that "It was felt by Reverend Adams that if the rest of this agreement were kept, as he anticipated at the time it was made it would be kept by all parties, that particular paragraph would not be necessary * * *" (SJA 13). In other words, this entire argument is based upon appellant's alleged unilateral interpretation of the agreement.

Appellant asserts in his brief (Brief, p. 5) that "Appellees * * * sought to obey the letter of the agreement but not the tenor * * *," which can only be construed as a concession by appellant that appellees have complied fully with the express provisions of the agreement, with the

⁵ His statement of issues filed pursuant to the court's order that issues be clarified goes far beyond the grounds of appellant's motion (Cf. JA 22-23 with JA 25-28).

complaint that they have not complied with what appellant is trying to read into the agreement.

In all candor, we have never understood why appellant belittles the publicity created by " * * * the very mechanics of carrying forth the other provisions in that agreement * * *" (SJA 13). The action of the Executive Committee appears in its minutes and was reported to the Executive Board (SJA 19-22, 28-29). The action of the Executive Board appears in its minutes and was reported to the annual session of the District of Columbia Baptist Convention, being printed in the Book of Reports for the annual session (SJA 46-47, 52).^{5a} The action of the Convention is printed in its 1964 Annual (SJA 53-56). This was all that appellant bargained for,⁶ and it has been provided in full.

^{5a} In printing the Supplemental Joint Appendix appellant omitted from the Minutes of the Executive Board for October 12, 1964 the two resolutions which the Board recommended for adoption by the Convention and the prefatory statement to those resolutions. However, these resolutions are printed at SJA 52 as they appeared in the Report of the Executive Board to the Convention.

⁶ Possibly the reference by appellant's attorney to "the very mechanics of carrying forth the other provisions in that agreement" is an indirect reference to a contention previously made by appellant, that "the Convention can only act as a body" (JA 27, par. 4) and that therefore a session of the Convention itself should have been convened to authorize the execution of a release. If appellant in fact had, as he claims, a knowledge of "the inner workings of the District of Columbia Baptist Convention, its Board, and Executive Committee" (Brief, p. 4), he would know that under Art. I, Sec. 1, of the Convention By-Laws (SJA 56) the Convention meets only in annual session beginning on the third Monday of November and there is no provision for special called sessions, and that between the annual sessions all powers of the Convention are exercised by the Executive Board or its Executive Committee. (See footnote 2, *supra*.) Thus the Executive Committee had the power to authorize the execution and delivery of the release on behalf of the Convention. This was the procedure contemplated by the parties during the negotiation of the agreement and the only means of obtaining authorization within the 10 day period provided. This procedure was expressly referred to in the letter of March 13, 1964 by appellees' attorney (SJA 17). Even appellant's letter of September 11, 1964, paragraphs 6 and 7 (SJA 39) apparently argues only that authorization should have been given by the Executive Board (although paragraph 19 of that letter, SJA 42, apparently argues that only the Convention itself could authorize it). On any view of the matter, we submit that this argument is absurd.

II.

Since the documentary evidence establishes that appellant himself has not fully complied with the settlement agreement, in that he has not obtained a proper release from the Temple Hill Baptist Church, he has no standing to complain of the alleged insufficiency of appellees' performance.

Paragraph 4 of the agreement obligated appellant to obtain from the Temple Hill Baptist Church within 10 days a release similar to that contained in said Paragraph 4 (JA 17). The form of release which was submitted by appellant was inconsistent with the agreement and was itself libelous (JA 17; SJA 5-6, 24-26). This release was rejected by appellees immediately (SJA 27). Appellant's attorney agreed orally on March 23, 1964 (SJA 31), and in writing on July 21, 1964 (SJA 33), to furnish a proper release. Such a release has never been furnished.

The relief sought by appellant is equitable in nature and must be administered on equitable principles. *Assmann v. Fleming*, 159 F.2d 332, 336 (C.C.A. 8, 1947). It is axiomatic that he who comes into equity must come with clean hands. II Pomeroy's Equity Jurisprudence (5th Ed.), §§ 397-400. We submit that appellant, since he has failed to comply with the agreement, has no standing in equity to complain of alleged non-compliance by appellees.

III.

Appellant's motion to set aside a voluntary dismissal was not timely under the provisions of Rule 60(b), Federal Rules of Civil Procedure.

Appellant's motion (JA 22-23) makes no reference to the Federal Rules of Civil Procedure, but he is obviously proceeding under Rule 60 (b)(3), under which a party may be relieved from a final order for "fraud ***, misrepresentation, or other misconduct of an adverse party." This portion of the Rule must be the basis for his motion, since appellant's

own statement of the reasons why appellees and their attorney "stand in default and contempt" is replete with charges that they are in "open defiance to the agreement" and "of the rights of the plaintiff," that they have "violated the essence of good faith," "bargained in bad faith," and are "open to citation for contempt" and are "irresponsibly in defiance," together with various charges of false statements (SJA 37-42).

Rule 60(b) requires that the motion "be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken."

The motion which was denied by the order now under appeal was made one year and seven months after the praecipe of dismissal was filed (JA 22; SJA 1), and so is clearly out of time. Even the original motion to vacate the voluntary dismissal, which motion was dismissed for lack of prosecution, was made one year and four months after the praecipe was filed (SJA 1; docket entries), and so it also was untimely.

Even on the theory suggested in appellant's brief (Brief, p. 7) that his motion is grounded on Rule 60(b)(6), "any other reason justifying relief", he still makes no effort to show that his motion was "made within a reasonable time" as required in every instance by Rule 60(b). The correspondence between the respective attorneys shows that appellant was at least fairly alert to the matters involved in compliance with the agreement. The letters written by appellees' attorney, culminating with his letter of December 29, 1964 (SJA 49-50), establish beyond question that at least by that date appellant was aware of every fact on which he might base a motion to set the dismissal aside. Yet no explanation is offered for the delay of over one year and four months from the dismissal (and at least six and a half months after he had full knowledge of the facts) before he filed his first motion, or for the failure to prosecute that motion, or for the delay to October 11, 1965 before his second motion was filed.

In his Statement of the Case appellant asserts (Brief, p. 2) that he filed his motion "Upon learning that Appellees had failed to live up to the terms of the agreement of settlement," but this assertion simply is not supported by the record (SJA 15).

Appellant's motion should have been filed "within a reasonable time" and not more than one year after the dismissal. He has failed to meet either requirement. See *Mayfair Extension, Inc. v. Magee*, 100 U.S. App. D.C. 48, 241 F.2d 453 (1957); *Tobriner v. Chefer*, 118 U.S. App. D.C. 246, 335 F.2d 281 (1964); *Gilmore v. Hinman*, 89 U.S. App. D.C. 165, 191 F.2d 652 (1951).

CONCLUSION

For the foregoing reasons, the order of the court below denying appellant's motion to set aside a voluntary dismissal should be affirmed.

Respectfully submitted,

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